"Legislation, Industrial Workers' Health and the State- the Indian experience"

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Rafay Eajaz Hussain

Centre for Social Medicine and Community Health

School of Social Sciences

Jawaharlal Nehru University

New Delhi-110067

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CENTRE OF SOCIAL MEDICINE & COMMUNITY HEALTH
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY

New Delhi-110067

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DECLARATION

This is to certify that this dissertation entitled : "**Legislation, Industrial Workers' Health and the State - The Indian Experience**" submitted by **Mr. Rafay Eajaz Hussain** in partial fulfilment of the requirements for the award of the Degree of Master of Philosophy, has not been previously submitted for any degree of this or any other university. This is his own work.

We recommend this dissertation be placed before the examiners for evaluation.

Dr. Imrana Qadeer

Supervisor

Mohan Rao 21st July 98

Dr. Mohan Rao
Chairman Centre of Social Medicine
& Community Health SSS
Jawaharlal Nehru University
New Delhi-110067

Gram: JAYENU Tel: 667676, 667557 Ext. 259, 262, 363 Telex: 031-73167 JNU IN Fax: (011) 6865886

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Rafay Eajaz Hussain.

(RAFAY EAJAZ HUSSAIN)

CONTENTS

CHAPTER - 1 INTRODUCTION

The present day industrialisation with advanced technology and techniques has, for the industrial worker, increased risks to their health. It is evident that for years together the Indian workers have been denied their fundamental right to a dignified existence. Labour laws have applied only to a miniscule section in the organised sector and only where there were unions to enforce them. These workers apart, an overwhelming majority are still forced to live and work in dehumanising conditions where none of the internationally accepted labour standards have any meaning. The urgency of implementing these standard is today greater than ever before.

The process of globalisation through structural adjustment has adversely affected the working class throughout the world. Labour in most developing countries has suffered because restructuring of industries has invariably led to unemployment due to closure of 'unprofitable' industrial units. In order to facilitate this process many countries have relaxed or removed legal protection to workers in the organised sector. The argument is that too much protection to workers in the organised sector has resulted in a small section of workers who are more privileged than the majority of the ill paid workers. However there is no evidence to show that by reducing these 'privileges' which were gained through concerted trade union action, conditions of workers in the unorganised sector will improve. This can be seen from the fate of casual

and contract workers in the organised sector. Though these workers perform the same tasks as permanent workers, their wages are low and they have little security of employment. The sole aim of employer in undertaking such measures is to increase profits by cutting labour costs.

In India, the industrial policy statement of 1991 was in tune with the global process of structural adjustment. Two glaring features of the new policy are an undermining of public sector and a reduction of employment in organised sector through voluntary retirement of workers - i.e. so called policy of "golden handshake". Is it any wonder that workers organisations across the nation are some what nervous about the golden future? A future without work?

Labour concerns about a future under liberalisation are many and varied. Among the trends projected by labour leaders, the major one is of mechanisation and automation that all modernisation' entails. It is argued that such modernisation will not only displace workers but also increase job intensity. Much of the work might be shifted out of the factory into the home, out of the purview of the labour legislation. As global capital moves into India to take advantage of the cheaper wages and lax environmental standards, it is also feared that 'dirtier' technologies will be transferred, making work even more dangerous.

As the technological base of industry, agriculture and service changes, it is inevitable that the accompanying organisational structures too will change casulisation and subcontracting are likely to increase with a drastic decrease

in permanent jobs. The growing number of temporary, casual and contract labourers would also be compelled to move from time - rate to piece-rate work. As the shift from factory to home takes place, there would obviously be deregulation and the numbers in unorganised sector would increase.

The social impact of this transformation is also well predicted and anticipated. Women, arguably the least protected members of society would be sucked into production - particularly home based. Poverty and the compulsion to find work will add to massive migration to the urban centres causing new forms of misery, ill health and social tensions. Privatisation of the economy will only discourage the formation of protective associations of labour and lead to an even more burdensome situation - the retreat of the state from many social sectors, including poverty alleviation, regulation and arbitration, decline in provision of public services, health and education etc.

When we get disgusted with any kind of social malady, our first reaction is that there should be a law against it. But is the law remedy of all maladies? Legislation to combat our social ills, as Nehru said, is perhaps "necessary and essential so that it may give that push and have that educative factor as well as the legal sanctions behind it."

The risks to workers health make it clear that the existing health needs and demands of the working people in different industries are not met adequately and the Government is expected to exercise some control on the process of

industrialisation to see that while growth takes place, the interest of workers is also taken care. Obviously then the key is in the hands of those who legislation in a democratic system. Legislation is not an independent entity. It is one of the important tools through which the government exercises its control. The structure as well as the institution of legal provisions then is crucial in making governmental interventions effective. In other words it is also a reflection of its intent and concerns.

India being a vast country has a large labour force, i.e. around 319 million according to 1991 census, of which only a small number is in the organised sector and a large chunk is in the informal sector. Indeed the informal sector is mainly comprised of non-wage and unorganised workers. It is this group which carries the heaviest burden of the socio-economic reality. For instance the construction workers who are not a small section of workers are the biggest victims of the prevailing situation in the construction industry. A significant aspect of the industry is the mobile nature of its work-therefore there is a total absence of an enduring employer-employee relationship. The whole industry is run on the basis of contracting and sub-contracting, which eliminates the possibility of contact between the principal employer and the workers. Even wages are not paid properly and workers do not enjoy bargaining power due to shifting nature of work. The employer-employee relationship is so temporary that to talk in terms of benefits like leave, bonus, maturity benefit, accident

compensation, child care and other social securities is like day dreaming [1].

The existing labour laws relating to social security like Emplyees Provident Fund Act, 1952 the Employees State Insurance Act, 1948 and the Payment of Gratuity Act - 1972 are based primarily on the premise of an enduring employer - employee relationship which is not applicable to construction workers. The other Act of labour laws, the Minimum Wages Act, Equal Remuneration Act, the Contract Labour Act and the Workmen's Compensation Act which are theoretically applicable to this sector, can not provide any benefit to the workers because of red tapism in labour departments and ineffective implementation. Only unionised and organised section of workers can ensure even partial implementation of these laws. This story of construction workers is also true for other deprived classes of labour i.e. women workers, child workers, agricultural workers etc.

The other problem which has come up with rapid industrialisation is that the newer technologies, new processes of production and growth of chemical industries have enhanced the risks to the health of the ever expanding industrial workforce, divided into organised and unorganised sector but firmly located in the same economy. The hazardous work manifests itself in the first instance in injuries to the human body. In extreme cases this also results in death or severe disability. The economic insecurity in the life of an industrial worker can have its source andorigin in numerous occupational and non-occupational

risks like sickness, unemployment, accident injury etc. It goes without saying that industrial worker, being a wage earner, has to face almost total economic disaster if his earnings are interrupted by any of the aforesaid risks. It also needs to be recognised that employment injuries cause misery and loss not only to the workers or their dependants [1], but also to the society in the final analysis. To paraphrase Beveridge, in any case, society has to pay for all such injuries in lessened power of production and idleness [2] a much less pleasant method of payment. The function of legislation then is to provide some degree of rights for social security.

What we need today is a contingency - wise integration of protective measures, which are scattered over too many statutes and schemes, resulting in multiplicity of administrative bodies and complete blinkering of policy perspectives and goals of protection.Though what exists today as legislation may not be as comprehensive as desired, it is an outcome of a long interactive processes between the workers, the interpre neures and the State.

OBJECTIVES :-

In view of the existing deficiencies - theoretical as well as functional - in employment protection systems for workers, the proposed study would focus attention on the changing patterns of protection systems against risks to workers health. The objective of our study is to explore the socio economic roots of the evolution of the legislations in the area of occupational health. It seeks

the reasons for the inadequacy of legal provisions to provide adequate protection to labour in general and health of the industrial worker in particular.

METHODOLOGY AND CHAPTERISATION

This study uses the method of historical analysis which makes it possible to, not only study the changes that took place in the legislation itself but also relate them, to the extent possible, to the changes in the socio, economic and political scenario. The fact that, socio-economic forces operate in moulding legislation regarding employment injuries and diseases, makes interdisciplinary approach of critical and immense utility here. As it is a very vast an area, to look at the trend, we identify two initial legislations, the Workmen's Compensation Act - 1923 and the Employees' States Insurance Act - 1948, whose in depth analysis will be done in our study. The research is based on review of existing literature and various legislations.

This study is divided into five chapters. The first chapter discusses the role of state in the area of health of workers in general and industrial worker's health in particular. Our focus is on the Indian industrial workers not because we consider the agricultural worker less important but because the questions we are asking can be better examined in the industrial sector, given the present availability of data and existence of not only laws but also mechanisms of state control and supervision.

In the second chapter, evolution of the law and Government's policy in the area of industrial safety and compensation before the making of the Workmen's Compensation Act - 1923, is given. This becomes necessary since the emerging post - independence social formation had its roots in the social, economic and political processes pertaining to pre-independent India. The task of analysing the workmen's compensation Act which was passed in 1923 makes it even more important.

The third chapter deals with the evolution and working of the workmen's compensation Act 1923 and analyses its various provisions and changes brought in it from time to time. The fourth chapter in the same way, deals with the E.S.I. Act of 1948, and discusses the State of administration of the Act.

In the fifth and the last chapter a comparison between the two schemes i.e. Workmen's Compansation and E.S.I schemes is done in the social context. and the question of the shift from workmen's compensation to E.S.I has been analysed. This is followed by a summary.

Notes :

1. Renana Jhabvala, "Wages for unorganised labour", Seminar 452 April 1997, P.25-27
2. Report of the Committee on Labour Welfare (1969) - P.321, Para. 45.2
3. Beveridge Report - (1942)

CHAPTER - 2 HEALTH AND THE STATE

The health of the worker has two major determinants, his work place and living conditions which are in turn determined by many other socio-economic factors, like production, terms and conditions of works, social background of workers, welfare inputs and social services. In any given society legislation can influence health of the worker by influencing any of these aspects of worker's life. Legislation is one of the important tools through which the government exercises its control. The structure as well as the institution of legal provisions then are crucial in making governmental interventions possible and effective.

HEALTH AND THE INDIAN CONSTITUTION

When the Indian Constitution was being framed the organisation of health services was in a phase in which the State was held to be responsible for health. In that phase, besides sanitary legislation and sanitary reforms aimed at controlling physical environment (Water supply and sewage disposal), more goals were added to health promotion process - such as mother and child health services, school health services, industrial health services, mental health and rehabilitation services etc.. Public health came to be understood as the science and art of preventing diseases, prolonging life and promoting health and efficiency through organised common effort.

The stage of health care was also characterise by efforts to build - Primary Health Centres (PHCs) for rural and urban areas as a part of the Community Development Programme (CDP) through the active participation of the whole community. The Bhore Committee recommendation (1946) had great bearings upon this movement. The CDP came along with the realisation of the need for social engineering for the reduction of "risk-factors" and improvement of nutritional status of population. Prominent place was given to health issues in the Constitution of India as a concrete State agenda for operation.

The Indian Constitution provides that the State shall in particular direct its policy towards securing that citizens - men and women equally have the right to an adequate means of livelihood [1]; that the health and strength of workers - men and women and the ternder age of children are not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age or strength [2]. It also enjoins the State to secure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment [3].

Article - 41, imposes a duty on the State to provide for public assistance in cases of unemployment, old age, sickness and disablement and other cases of undeserved want.

Article - 42, provides for just and humane conditions of work and maternity relief. Article - 43, provides that the State shall endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise decent standard of living. Wage conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

By Article - 46, State is specially enjoined to protect the weaker sections of the society from social injustice and all forms of exploitation. Article - 47, provides that, State shall regard raising the level of nutrition and standard of living of its people and improvement of public health as among its primary duties. In particular the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and drugs that are injurious to health.

As the pollution has become a potential danger to health of the mankind throughout the world, Article - 48 - a, was added to the constitution by 42nd Amendment Act - 1976, which provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

All the aforementioned provisions are part of the `Directive Principles of State Policy', which though fundamental in the Governance of the country are not enforceable in a court of law. But fundamental rights provided under

Part - III of the constitution and guaranteed to citizens also provide for reasonable restrictions. Freedom of speech and expression; freedom to carry on profession, occupation, trade or business and freedom to practice religion can be regulated or restricted in the interest of public health, morality, and welfare of the community.

In recent judgements of the Supreme Court, the " Right to health " has been declared to be a part of the " Right to life and Personal Liberty " provided under article - 21 of the Indian Constitution [4].In what aspects the term `Health' is used in the constitution needs to be understood ?

Health basically refers to the States of body as regards:

- its State of " no disease ".
- its efficient functioning.
- Its potential to meet the forces tending to disturb it.

These three things can together mean a sound body with an ability to lead a socially and economically productive life [5]. In other words though the mental and social aspects have not been spelled out here, they are very much integral to the constitutional definition of health.

The World Health Organisation (1948) gives a wide definition of health in the preamble to its constitution in the following words; "Health is a State of complete physical, mental and social and spiritual well being and not merely an absence of disease or infermity".

The definition is broad and positive and sets a positive standard of health. The operational definition of health has been devised by the WHO study group in the terms as " a condition or quality of human organism expressing the adequate functioning of the organism in given conditions, genetic or environmental [6]".

These definitions relate to various important dimensions. These may be mentioned below as: -

(a). Physical (b). Mental (c). Social (d). Spiritual

(e). Emotional (f). Vocational (g). Economic (h). Environmental

(i). Educational (j). Nutritional

These dimensions symbolise a wide range of factors to which other sectors besides health must contribute to attain a level of health that will enable all to lead a socially and economically productive life.

The provisions of the constitution provide the overall framework for the articulation of legislation for the protection of peoples health.

The term health used in the constitution therefore must be understood in all its dimensions. The health policy resolutions adopted under the first and the second five year plans and the adoption of the recommendations of Bhore committee (1946) and Mudaliar committee (1959) by the government

of India, indicate that the wide definition of health given by WHO, has been accepted for all practical purposes in our country too.

CONSTITUTIONAL PHILOSOPHY OF HEALTH

In India, constitutionally health should not be considered as a mere charity or the privilege of the few but a right for all. Universal declaration of Human Rights (1948), declare in its Article - 25, that " Everyone has the right to a standard of living, adequate for the health and well being of himself and his family". Also the preamble of the constitution of WHO affirms that it is one of the fundamental rights of every human being to enjoy "the highest attainable standard of health". In view of this fact the new philosophy of WHO is that: -

- Health is a concern of every human being.
- Health is the essence of productive lives and not the result of over increasing expenditure on medical care.
- Health is an integral part of development.
- Health is intersectoral concept.
- Health is central to the concept of quality of life.
- Health and its maintenance is a major social investment.
- Health should be a worldwide social - goal.
- Health should be a fundamental right.
- Health involves individual, State and international responsibility.

The provisions of the Indian constitution related to health are based on the same philosophy and warrant its reflection in the actions of the governments, legislative enanctments and court decisions [7]. Within the constitutional obligations, the Indian Government is required to legislate and implement the provisions of international conventions and resolutions in which it is a party or signatory. In the context of large scale growth of chemical industry, awareness for safeguarding the health and safety of workers as well as protection of the neighbourhood population assumes all time importance. Over the years the Indian legislatures, under the guide lines of the constitution, have given a body of legislation that address the problems of industrial workers under conventions that have been adopted for occupational safety, health and welfare. The few important conventions are listed in table - I.

1.	Universal declaration of Human Rights (1948).
2.	Convention concerning the protection of workers against Ionising radiations (C-No.-115).
3.	Convention concerning guarding of machinery (C-No.-119).
4.	Convention concerning Hygiene in Commerce and offices (C-No.-120).
5.	Convention concerning the maximum permissible weight to be carried by one worker (C-No.-127).

6. Convention concerning protection against Hazards and poisoning arising from Benzene (C-No.-136).

7. Convention concerning Prevention and Control of occupational Hazards caused by carcinogenic substances and agents (C-No.-139).

8. Convention concerning the protection of workers against occupational Hazards in the working environment due to Air , Noise and Vibration Pollution (C-No.-148).

9. Convention concerning occupational safety and Health and the working environment (C-No.-155).

10. Convention concerning occupational Health Services (C-No.-161).

11. Convention concerning safety in the use of Asbestos (C-No.-162).

12. Convention concerning safety and Health in construction (C-No.-167).

13. Convention concerning safety in the use of chemicals at work (C-No.-174).

14. Convention concerning safety and Health in Mines (C-No.176).

Under Article - 51, of the Indian constitution the State is duly bound to foster respect for international law and treaty obligational. Thus constitutionally also the State is under obligation to work towards the accomplishments of objectives of international conventions and resolutions and for that legislation is an important step.

LEGISLATION AFFECTING WORKERS' HEALTH

Secondly, in pursuance of constitutional provisions and obligations under international instruments the State has also provided specific legislation for workers' health and welfare, which can be grouped into the following categories.

Laws creating basic norms of health and welfare in respect of industrial undertakings - as provided in factories Act, Mines Act, Plantation Labour Act and other similar basic enactments.

Laws pertaining to general welfare of special groups of industrial workers such as those working in mining and plantation industries etc.,

Legislation concerning woman workers.

Legislation providing social security to workers.

Legislation creating several labour welfare funds.

Housing legislations.

Measoures for protections of children.

Legislation concerning agricultural workers.

Miscellaneous Legislation.

In the following sections we discuss these categories briefly as they exist today.

(I) BASIC HEALTH PROVISIONS

The factories Act - 1948, lays down that dust and refuse shall be removed daily, flooring shall be washed at least once a week. Walls, partitions and cielings of workplaces shall be painted at least once in 14 months with water colour and once in five years where oil paint is used - temperature shall be kept at a level comfortable to workers and the appropriate Government may prescribe standard of temperature and ventilation. In work - rooms a worker should be provided with space at the rate of 350 cubic feet in old factories and 500 cubic feet in new factories. Drinking water should be made available at workplaces and it shouldbe available during all working hours and be stored at the rate of one gallon per worker per day. Conservancy arrangements are required to be made by employers in all factories, separately for men and women workers. Spittoons should be provided and conveniently placed. The employer is also required to provide washing facilities of an approved type, separately for men and women at a scale as laid down by the Government. The Act requires first - aid boxes with prescribed contents be kept in all factories trained men to dispense first - aid should be available during working hours. Further, every factory employing 500 or male workers should maintain an ambulance room staffed by a doctor, compounder and a nurse equipped with at least the minimum prescribed articles. Such factories should also make arrangements to have an ambulance van available at call. Seating arrangements should be

made for all workers obliged to work in a standing position, in order that they take advantage of any opportunity for rest which may occur in the course of their work.

The Mines Act (1952), and the Plantations Labour Act (1951), also provide for health provisions similar to those in the factories Act. Merchant Shipping Act (1923) and C.P.W.D. Rules too have some provisions concerning the health of workers.

(II) BASIC WELFARE MEASURES

The Factories Act (1948) lays down that the appropriate Government may make rules requiring that in specified factories wherein more than 250 - workers are ordinarily employed. Canteen(s) shall be provided and maintained by the employer for use of workers. The standard in respect of construction, accommodation, furniture and other equipment, the foodstuff to be served and charges thereof shall also be subject to the rules so framed. Again provisions are made for adequate and suitable shelters or rest - rooms and lunch - rooms with drinking water where workers can eat meals brought by them.

Facility of creche to be provided in every factory wherein 30 or more women are employed. Such creche shall provide adequate accomodation, to be well lighted and ventilated, maintained in clean and sanitary conditions and will be under the charge of a woman trained in dealing with the infants

and children. Provisions for the employment of welfare officers are also provided in the Factories Act , the Mines Act and the Plantations Labour Act and also makes provisions for recreational, educational and medical facilities for workers.

(III) WOMEN WORKERS

Most of the Labour Acts make special provisions for women workers. Factories Act provides separate toilet washing and resting facilities for them. It prohibits their employment during night or in hazardous occupation. It makes special safety provisions by disallowing their employment in cleaning, oiling or repairing moving machinary or to lift heavy weights. If she has a young child whom she has left in the factory creche, she has to be given time off at Stated frequencies to feed her baby. Mines Act prohibits women's employment below ground. Maternity Benefits Act (1961) provides for certain maternity benefits to women workers.

(IV) PROTECTION OF CHILDREN

The Factories Act prohibited the employment of children below the age of 14 years in factories. Young persons between the age of 15-18 could be employed in factories subject to certain conditions. Again a young person can't be employed during night or in cleaning, oiling or repairing jobs or in hazardous occupations. Mines Act, too provides for similar provisions.

(V) LABOUR WELFARE FUNDS

In 1946, the Government of India initiated a scheme to finance welfare activities in industrial undertakings out of specially created funds. In pursuance of the scheme a number of enactments were made such as the Mica Mines Labour Welfare Funds Act (1946), the Coal Mines Labour Welfare Funds Act (1947). The Government of India also framed rules to introduce such funds in industrial undertakings owned and controlled by them. Similar funds were instituted by some of the State governments too.

(VI) HOUSING LEGISLATION

The first housing enactment was passed in the shape of Land - Acquisition (Amendment) Act (1933), which enabled employers to secure land for the constructions of houses for their employees. The Plantation Labour Housing Scheme was introduced by the Central Government in 1956. The scheme makes provisions for the grant of lean assistance to the planters through the State government. The subsidised industrial housing scheme introduced in 1957, envisages the grant of financial assistance by the central government to the State govt and through them to other approved agencies e.g., statutory housing boards, local bodies, industrial employers and registered co-operative societies of industrial workers for construction of houses.

(VII) LEGISLATION PROVIDING SOCIAL SECURITY TO WORKERS

The Workmen's Compensation Act (1923) provided for compensation in case of death, total/partial/permanent/temporary disablement. The liability of the employer to compensate the worker was total. In the beginning there was no protection against occupational diseases. The Act was changed in 1926 when provisions were made for compensation against occupational diseases too.

Another Act the Employee State Insurance Act (1948) provides compulsory insurance to the workers covered under the scope of the Act, against risks of sickness, maternity and employment, injury which includes occupational diseases too. The dependents of deceased workers are paid periodically. It also provides for medical care for the worker and his family.

Other social security legislations concerning workers are Employees Provident Fund Act (1952) and Payment of Gratuity Act (1972).

(VIII) AGRICULTURAL LABOUR

There is a demand for a long time for a legislation to regulate the employment and conditions of services of agricultural labour providing inter alia for their unionisation, settlement of disputes and welfare. It has however not been given due consideration to introduce such a legislation centrally. The Minimum Wages Act (1948) is one Central Act which deals with this problem but has

not made any noticeable impact. Some States, however have such a legislation of which Kerala is a pioneer. It has a law for agricultural labour called the Kerala Agricultural Workers Act (1974). It seeks to legislate the conditions of work and to provide for the welfare of agricultural workers. The Act makes statutory provisions for the establishment of a welfare fund which is intended to be utilised for the welfare of agricultural workers or their dependents by providing a variety of benefits such as superannuation benefit, death benefit, maternity benefit, medical assistance, educational assistance, etc.. There is a similar law in Tripura as well. Kerala has also introduced a pension scheme for agricultural workers. The scheme provides for payment of pension to agricultural workers who have completed 60 years of age subject to a means of test. The Government of india have introduced an insurance scheme for landless agricultural laboureres. Under the scheme all landless agricultural labourers are provided an insurance cover of Rs.2000/- at an annual premium of Rs.10/- per worker. There is a similar scheme for IRDP benefeciaries.

In August `87, the Government of India set up the National Commission on Rural Labour for getting an insight into the problems of rural labour. The Commission was to study inter alia, the economic, social and working conditions of rural - labour and the disabilities including a lack of social - security. The commission submitted its report in 1991. It has made a large number of recommendations regarding social - security for rural labour including agricultural labour but no concrete steps has been taken on it.

India is a vast country both in terms of area as well as population. It has a total area of 3288 Thousand Square Kilo Metres and a population of about 870 Million. The eights Plan projected further growth of population at the rate of 1.78 % per annum. The projected population during the next decade is as follows: -

1991 - 1996 = 925.13 Million.

1996 - 2001 = 1006.20 Million.

The following table shows the labour force projections: -

Age Grp	1992	1997	2002	2007	1992-97	1997-2002	2002-07
					Millions addition to labour force		
5+	328.94	364.31	400.75	440.74	35.37	36.44	39.99
15+	316.65	351.61	387.92	427.87	34.96	36.31	39.95
15-59	294.90	325.87	357.82	393.02	31.27	31.95	35.20

The Labour force was expected to increase by about 35 Million during 1992 - 97 and by another 36 Million during 1997 - 2002. Thus the total number of persons requiring employment will be 58 Million during 1992 - 97 and 94 Million over the per year period of 1992 - 2002.

Till recently Indian economy was a planned economy consequent on the introduction of the new economic policy in 1991 the role of planning has been changed from a highly centralised planning systems to a decentralized one. We are gradually moving towards planning that is indicative in nature and recognises human development as the core of all developmental effort. This shift to decentralised, local institutional planning, privatlisation, technology intensive production infact at the cost of labour force.

With the rapid industrialisation, the worker in factories is exposed to the vagaries of industrialisation such as sickness, maternity, employment, injury, invalidity, old age, death, unemployment. The limitation of the coverage of all these conventional social security schemes in the formal sector is indicated by the fact that India has not been able to ratify the social security (minimum standards) convention adopted by the International Labour Organisation in 1952 [8].

In a nutshell there is a contradiction between evolution of legislation over time for greater protection of workers and the present withdrawal of the State which leads to decontrols and legislative laxity even through of is in the name of human development. There is a crying need to add a new dimension and a new meaning to the entire social security scenario in the country. This will usher in a true - era of social - security encompassing the areas which

deserve social security the most.[9]. Yet the see that the social process is slowing the evolutionary process of legislative reforms as is evident by lack of any progess in legislation relating to the unorganised sector specially child labour, construction labour etc.

Notes :

1. Article - 39 (a) of the Indian Constitution.
2. Article - 39 (e) of the Indian Constitution.
3. Article - 39 (f) of the Indian Constitution.
4. See Francis Coralie Mullin v. Union of India, A.I.R. 1981 S.C. 74-6 and Bandhna Mukti Morcha v. Union of India A.I.R. 198- S.C. 802.
5. W.H.O. (1957) - Health For All , Sl. No. 1.
6. W.H.O. (1957) - Technical report, Sl.No. 137.
7. Dr. M. Afzal Wani, "The Global Health laws : A Movement from Conventionalism to Constitutionalism" - Paper Presented at International Conference on Global Health Law, New Delhi (1998).
8. A.L. Ganapathi, "Social Security in India - Some Suggestions" in R.K.A. Subramanya (ed.) "Social Security in Developing Countries". Har - Anand Publications, New Delhi (1994).
9. P.B. Duggal, "Social Security in India - A new Profile". Har - Anand Publications , New Delhi (1994).

CHAPTER - 3 EVOLUTION OF THE LAW AND GOVERNMENT'S POLICY IN THE AREA OF INDUSTRIAL SAFETY AND COMPENSATION

Before we go into the details of the evolution of law and Government policy in the area of industrial safety and compensation, we must review briefly the process of industrialisation and formation of labour force in India.

THE INDUSTRIALISATION PROCESS

Industrial capitalism was well established in Europe during the late 18th and early 19th century, but in India modern type of industries could be set up only during middle of the 19th century. Indigo plantations were the first to be started in 1831, followed by a cotton mill in Bombay in 1853, the manufacture of jute in Calcutta in 1955. The coal fields were connected by rail to the port city of Calcutta and then a rapid expansion of rail lines took place through out India. According to the Royal Commission's Report, by 1929 the pattern of industry had changed somewhat Cotton, Jute and the railways remained as very large employers but plantations of tea, coffee and rubber had also become major employers. Manufacturing units had expanded into steel, general engineering, paper, cigarettes, armaments and foundries. Mining had expanded into manganese and Mica and a nascent construction sector had begun to emerge to support the industrialisation process. In addition, an 'unregulated' sector was being drawn into the market economy, a sector made up mainly of traditional

activities in bidi, shellac, carpet, wool, mica and match manufacture.[1] Later with the world war-I the conditions of labour were greatly affected, when a large number of factors came on the scene. The war created a period of boom for employers, with rising prices their profits went up enormously. The wages of workers, however did not keep pace with the tendency. The economic distress brought workers together and an organised working class movement began in the country.

The second world war contributed enormously to the growth of industrial production and employment. All kinds of new industries were coming into existence. While the plantations, cotton, Jute and the railways were all still big employers, the manufacturing industry had grown beyond steel and engineering etc., into cement, sugar, shipbuilding, chemicals, dyes and beverages. The composition of the unregulated sector was about the same, but it too had grown enormously to meet the war demands. Thus on eve of independence India had a small but significant industrial sector.

The trend that emerged during the period of second world war continued in the post independent as well. Over the first fifteen years the industrial sector expanded rapidly, particularly after 1957. From 1965 onwards there was a significant decline in growth rates but the overall expansion continued.[2] From 1955 onward new industries like chemicals, fertilizers, metal, power, petroleum and coal, machinery and minerals became the most important group of manufacturing industries by the 1970s, in

independent India. This continuous expansion and diversification of industries led to the expansion of Indian working class. Given the tendency to diversity into some of the most hazardous industrial enterprises like chemicals and fertilizers, work in industry with the passage of time has become more dangerous.[3] This is especially so given the poor safety precautions provided to the workers. The workers have been put into conflicting situation where industry which gives them sustenance for life also become the cause of losing it. The living conditions of the workers continued to be poor, while their working conditions deteriorated due to increased pressure of productivity.

The changing pattern of industrial production and expanding work force had its own implications for the health of the workers. For example, industries like textiles, jute and mining had mechanical and dust hazards and their intrinsic dangers mere combined with the insanitary conditions in which workers were forced to live. The introduction of machinery, especially high speed machines, created higher risk of accidents while the chemical, fertilizer and petroleum industries brought in the risk of genetic diseases, chronic poisoning and ecological destruction.[4]

An analysis of the organisation of labour around technologies in the new as well as older industrial units - done by Qadeer and Roy, Shows that : (i) the technological options chosen have made some tasks in the division of the production process much more hazardous; (ii) that these tasks are generally given to unskilled contract and casual workers who have little bargaining power; (iii) that there is a strong tendency to

devise less safe but quicker methods of production, particularly in the small - scale units; (iv) that even the organised industries which are mechanised sub-contract work to small scale units and thus depend on contract labour for the completion of many necessary tasks.[5]

As Somers and Somers have very rightly put it, "work has always been dangerous, but the mechanisation of industry and its more recent 'chemicalisation' have increased the hazards of labour beyond all previous experience".[6] Wilson and Levy have also held that the rapid growth of industrial injuries and diseases is one of the consequences of the increasing use of power in factories, workshops and mines and that further every machine and most new processes create fresh risks and dangers for the workmen.[7]

EMPLOYMENT INJURY: THE JOINT FAMILY AND THE TRADE GUILDS

In ancient India, joint family was the most important unit of social - organisation and it provided the best protection to each and every member of the family against all calamities - be it accident, sickness or old age. However, in due course of time, particularly with the advent of factory system in India, resulting in migration of rural worker to cities in search of paid employment, the institution of joint family started disintegrating and thus, workman was left high and dry to fend for himself in hostile urban environment. If employment accident struck him he was completely ruined

financially on account of loss of job and physically, on account of disablement. Outside family circle, a workman in distress could appeal to his kinsmen, who formed his caste and his neighbours.

One of the most important institutions, devised in ancient Indian society for protection of workers and artisans was the guild (sangh) system. These sanghs or guilds were voluntary bodies formed by workers and artisans in various occupations on the principle of mutual insurance of today. All the members, contributed to a common fund, which was used to help the needy. This system was transformed by modernisation of industry where uniformity of caste no more remain the basis of work organisation in one unit.

SOCIAL - STRATIFICATION

It is by now well recognised that labour in India may be divided into three broad State of permanent, temporary and contract. This differentiation in labour generally parallels the differentiation in production process and thus differential exposure to health hazards. It appears that the overall social stratification penetrates deep into the labour force. Links with land, patterns of migration, education and skill determine which level of labour one enters and where in that level one is placed. The implications of stratification for health are that, given the scarcity of facilities, those who are privileged and control resources, also control the facilities. The classes at the bottom, who have no control and no access, are deprived of over the basic minimum facilities of life.

This is true, whether it is health, housing, sanitation, education facilities or employment, as shown by Banerji [8], Zurbrig [9], Djurfeldt et al [10] and Qadeer [11]. Though these studies focus on the rural stratification, the case of the labour force is not different. Their social inequality has serious implications for their health not only at the work place but also at home. This is so because, skills and education and hence job-definitions of the workers depends on the socio economic background they come from. The more depressed their origins the more likely they are to take unskilled jobs and jobs that no one else takes because of the associated hazards. This becomes self-perpetuating because the less their ability to resist these jobs, the more disadvantaged they will become by constant exposure to health hazards and the ensuing illness and injuries. Their place in the social hierarchy also determines their access to basic amenities for life like housing, drinking water, medical facilities, education etc. which, as we know are inaccessible to those at the bottom.[12]

EMPLOYMENT INJURY : GROWTH OF MODERN PROTECTION SYSTEMS

With the establishment of more and more industries, the need to regulate labour relations with owners through legislation regarding the working of industries, became necessary and laws were enacted from time to time. These covered terms of contract, conditions of work, liabilities of employer and workers and laws regarding welfare and health of workers. Measures such as canteens, creches, rest rooms, first aid appliances, dispensaries, drinking water etc., that are taken for granted, took long

time to come, which is evident from the account of the development of labour legislation in India. As the analysis of the evolution of whole amount of labour legislation in India, is too bulky a task, here we take into account two major legislation affecting the workmen's injury and relief system in India i.e. the workmen's compensation Act - 1923 and the Employees State Insurance Act - 1948. Before proceeding with the analysis of the two concerned legislation in the following chapters, here we go into the details of the evolutionary process of compensation system for workmen's injury in India.

When the British came, Indian industry was in a nascent stage. The protective sytems worked through guilds and religious charity. There was hardly any relief instituted under the law of the State for victims of employment injuries. The British interpreted it as if there was hardly any law of the land in India, governing non-personal matters like penal, commercial and labour matters. The first law commission in its Lex Loci Report (1840) recommended that English Law should be declared as law of the land (Lex Loci) for India because "there is probably no country in the world which contains so many people, who, if there is no law of the place, have no law whatever." (13)

Gradually, English law was introduced in the country, which governed all non-personal matters including labour matters. Consequently, the growth of modern institutional protection systems for employment injuries in India started only during the British period.

Initially, the Indian worker was entitled to the same protection of English common law, which was available to English workers before the introduction of workmen's compensation scheme in England. Till independence, almost all of our labour statutes including Workmen's Compensation Act - 1923 were based on British Pattern. So, it becomes necessary for our study to look into the evolution of the workmen's compensation system in Britain.

DEVELOPMENT OF THE WORKMEN'S COMPENSATION SYSTEM IN BRITAIN

The first legislation on workmen's compensation in Britain was, made in 1897 and prior to that there was very little legislative safeguards for the injured workman or his family.

Till 1880, the only remedy open to an injured workman in Britain was to bring an action under common law and it was very difficult for him to succeed in such an action because of the various defences which the common law allowed to employer and because of the unsystematic attitude of the judiciary towards the working class at that time.[14] If the workman was killed outright or died as a result of an accident caused by the negligence of the employer, all right of action died with him and his dependants were without any right to relief or compensation. The Fatal Accidents Act - 1846 later conferred a right of action on the personal representatives of a person whose death had been caused by the wrongful act of another, in all cases where such a right would have existed if death had not occurred.

The Employers' Liability Act - 1880 was, however the first attempt to bring the law on this subject into relation to the needs of industrial life.[15] The general effect of the Act was that the general defence of common employment by employers were largely restricted, but other defences were still open to the employers. Other defects of the Act were that (i) compensation was obtained through the courts only after a long lapse of time and not when it was actually needed; (ii) whether the injured employee recovered damages or not, as soon as he began to press his suit, he lost his job.

In addition to these defects of the Act, an important decision in 1882, in the case of Griffiths vs. Earl of Dudly, (in which it was held that for a workman to contract out" of the Act i.e. not to claim compensation for injuries under the Employers' liability Act was perfectly legal) further limited the protection which a workman could otherwise have obtained. For all these reasons, the Workman's Compensation Committee of 1904 concluded that" as a means of obtaining compensation for injury with a reasonable degree of certainty the Employers' Liability Act of 1880 must be considered to have been a failure. [16] The committee also noted that compared with the number of accidents, the number of actions brought was exceedingly small and that in a large proportion of them, the workman failed.

WORKMEN'S COMPENSATION ACT - 1897 : A REVOLUTION

Between 1880 and 1897, a few abortive efforts were made to enlarge the liability of the master while still retaining negligence on his part as the test of his legal

liability. These attempts were finally abandoned in 1897 when the Workmen's Compensation Act was passed, introducing an entirely new concept and principle in the English legal system. The new doctrine was the principle of occupational risks and the guiding principle of the new Act thus was that the default of the employer or his negligence was henceforth to be no measure of his legal liability, to the injured person.

The Act of 1897 was limited in its application to certain dangerous employment and the compensation payable was upon the workman's previous earnings. Thus the Act of 1897 was a great step forward, but it was only a milestone in the long road to be covered and the next important landmark was reached in 1900 when an amendment was made to the Act of 1897 by virtue of which common and agricultural labourers were included in the scheme. Later in 1906, another Workmen's Compensation Act was passed and the most striking change brought about by the Act of 1906 was undoubtedly the inclusion of industrial diseases in the schedule of risks covered. In another direction the Act of 1906 made an important alternation section -7(1) of the 1897 Act, which made it necessary that the accident should occur on in or about' the employers' premises, disappeared; no restriction was placed thereafter as to where the accident happened or the disease contracted. Taken as a whole, the Act of 1906 did no more than extend, amend and improve earlier legislation and provided for some more protection for the injured workman.

In May 1919, the appointment of a Departmental Committee (Holman Gregory Committee) was announced by the workmen's compensation system. The committee submitted its report in July - 1920.

HOLMAN GREGORY REPORT

It is observed that (i) the administration of a workmen's compensation Act usually involved many disputes of law and fact, and it was not desirable for the State to enter a sphere of administration involving disputes with workmen which frequently led to litigation (ii) although the workers representatives were strongly in favour of a State scheme, they were at the same time extremely reluctant to contribute to any State fund, even for the purpose of providing additional benefits.

The committee also made it clear that the State would fail in its duty if it imposed increased obligation on the employers without taking steps to ensure that benefits provided for the workmen should not become illusory [17]. In other words compulsory insurance of liability was the most fundamental requisite for any further extension of the workmen's compensation system.

The committee recommended the adoption of the principle of fixed benefits for different classes of dependants without reference to the earnings of the deceased workman [18]. Hitherto the basis of calculation of compensation was the past earnings of the workman; the committee thus strongly urged its abandonment which had no regard to the age, condition, needs or even numbers of the surviving dependants, resulted in anomalies and worked unfairly in the case of families [19].

Two other important recommendations of the committee were the appointment of a commissioner to supervise the operation and application of the Workmens' Compensation Acts and the extension of the definition of workman so as to bring more people within it.

THE WORKMENS' COMPENSATION ACT OF 1923

The Act of 1923 sought to give effect to some of the recommendations of the Holman-Gregory Committee. The definition of the term workman was further widened, the upper limit of remuneration of non-manual workers entitled to compensation was raised, the scale of benefits was also substantially altered.

The provision of a wide range of medical and surgical aid was recommended by the Holman - Gregory Committee, but the new Act made no mention of them. This was one of its very serious defects. However a novel innovation introduced by the Act of 1923 was the provision for varying the compensation rates with changes in the general wage level.

At this point in our discussion, before looking at the origins of the Workmen's Compensation Act of India as the first instalment of social security legislation in the country and it came into operation on the 1st of July, 1924. Before proceeding to the discussion of the workmen's compensation system in India. It is worthwhile to note the manner in which workers could recover damages from their employers for industrial accidents prior to the introduction of this system.

FROM COMMON LAW TO WORKMEN'S COMPENSATION

The workmen's compensation legislation in India as well as in most other countries of the world in based on the 'doctrine of occupational risks". This doctrine however, has come to be recognised only very recently - in some countries and prior

to its recognition, the only remedy available to the injured workman was to invoke the aid of common law. We shall try to trace this development from common law to the doctrine of occupational risk, the basis of workmen's compensation legislation in India.

COMMON LAW OR QUASI - DELICTUAL LIABILITY

The basis of the right to compensation for industrial accidents, as an important ILO Report points out, was at the outset sought in the classical conception of liability contained in civil codes founded on Roman Law. The Report refers to this liability of the employer as "common law or Quasi Delictual Liability [20]. Under this system, the injured workman could only obtain compensation by bringing and winning - a common law action against his employer. To be successful in this, he had to prove negligence, on the part of the employer (i.e. the failure to observe proper precautions in the conduct of his business either personally or by not taking care to engage reasonably competent workman or to provide efficient machinery and keep it in proper repair). The employer was thus not liable to pay compensation for damages due either solely to the fault of the worker or to chance, or to force majeure or to some risk inherent in the work itself and unconnected with any defect either in the installation or the working of the undertaking, or in the selection of the worker.

This system appeared to be to the advantage neither of the employer nor of the worker even though due to lack of proof the employers mostly went without being indicted. If the workman was killed outright or died as the result of an accident caused by the negligence of the employer, all right of action died with him and though his

family was in many cases, ruined by his death, they had no claim to compensation. Secondly, it was often difficult and sometimes even impossible, for the worker or his representatives to produce the requisite proof of the employer responsibility either because the State of health of the victim or of those whose evidence was indispensable made such proof impossible, or because conditions on the scene of the accident could not be reproduced as they had been modified by the accident itself. The process of proof thus gave rise to disputes and led to litigation which delayed the assessment of compensation. The natural result of such disputes and litigation was to embitter the relation between the workers and employers. Further, from the employer's point of view, his legal liability to pay compensation to the workmen in case of any injury, was rather uncertain and indefinite. This was perceived as an adverse effect on the employer psychology and therefore, on the industrial progress itself. Finally, in a large number of cases, the responsibility or the fault of either party could not be ascertained.

The extremely meagre protection which was afforded by common law was further restricted more than a century ago by judicial decisions which gave the employers a powerful weapon - "the defence of common employment". This was admitted for the first time, as a good defence, in Great Britain in the case of Priestly vs. Fowler.[21] "The principle is that a servant, when he engages to serve a master, undertakes as between himself and his master to run all the ordinary risks of the service and this includes the risks of negligence on the part of a fellow-servant, whenever he is acting in the discharge of his duty as a servant of him who is the common master of both"[22]. This

doctrine ruled out a large number of accidents due to the carelessness of a fellow-workman, especially on the railways, because a locomotive driver or guard on a train was held to be a fellow-servant of a singleman who set the points wrongly or even of a traffic superintendent in charge of a distant station [23].

Another defence that could be set up when a common law action was brought in cases of accident, was that known as "volenti non fit injuria" which in effect meant that "the injured workman is said to have known the risks of his employment and to have accepted them." There was also a third defence available to the employer and this was based on the doctrine of "contributory negligence". As per this doctrine, the action at common law of an injured workman against his employer was rendered ineffective if the evidence showed that he was partially responsible for the accident that caused his injury to the extent that without his negligence, the accident would not have happened. Thus, at a time "when workmen most needed the protection of common law, it was interpreted by the courts against them through the imposition of three limitations arising from the doctrines of (1) Common employment (2) volenti non fit injuria and (3) Contributory negligence. The result was that by the middle of the 19th century the common law had come in practice to afford little protection to workmen [24]. It is probably correct to hold, as has been done by a contemporary author, that the vast majority of industrial accidents during the mid - 19th century was entirely uncompensated [25]. The difficulties of the workman or their dependants were further accentuate by the infavourable and unsystematic altitude of the judiciary at that time,

far, as Cohen testifies, "not only did the courts interpret the law favourably to the employer when he had exercised reasonable care, but a whole series of cases were decided in his favour even when he had been guilty of gross negligence [26]".

SYSTEM OF CONTRACTUAL LIABILITY

The need was, therefore, felt of evolving an alternative system of liability and this came to be known as the "system of contractual liability". Under this system, the worker's right to compensation arose not from the fault of the employer but out of the contract for the hire of the workers' services, which entailed for the employer an obligation not only to pay agreed wages, but also to see to the safety of his workers, and consequently to ensure that they left his undertaking at the expiration of their work in a sound State of health. Any accident which accrued in the course of work was presumed to be attributable to the conditions of the work and in principle, entitled the victim of it to compensation, if the employer wished to clear himself of liability to compensation, he had to rebit the presumption of liability by proving that the accident was due to the fault of the victim, to chance or to force majeure [27]. Thus, the onus of proof of negligence, which under the common law system, lay with the worker, shifted to the employer and this was clearly a considerable advantage for the workers.

Though an improvement, the system continued to practically retain all the drawbacks and defects of the other one : it led to a vast amount of litigation, caused great hardship to the workers as he had to wait till the proceedings were over it embittered the relation between the employer and the workers, produced an adverse

affect on industrial progress itself, etc. The attempt, therefore, to solve the problem on these lines did not prove successful and it found no favour with legislators.

PRINCIPLE OF OCCUPATIONAL RISK

The satisfactory solution was ultimately found out by a generalisation and application of the "principle of Roman law dealing with the de facto responsibility arising out of ownership and control : that is to say, the principle that, apart from any idea of responsibility, compensation for damage caused by a given object must be paid by the owner thereof. As applied to industrial accidents, theory of objectives responsibility or of legal liability culminates in the system which is known as the system of occupational risks"[28]. It now came to be recognised that an employer who runs a factory, who surrounds himself with power driven machines and workers, creates ipso facto an organisation, the operation of which may cause, and does in practice cause injuries, the compensation for which, irrespective of any idea of fault, falls upon the employer himself. "The risks inherent in work are the consequence of the normal development of human activity. As a whole they constitutes that occupational risk which comprises all industrial accidents. The pecuniary costs of industrial accidents from one of the liabilities of the undertaking in the same way as the cost of repair and depreciation of equipment, the upkeep of premises the worker's wages and the salaries of the management compensation should, therefore be included among the overhead expenses of the undertaking and falls entirely on the employer"[29].

Commenting upon this principle of occupational risk, another important ILO study observes "The principle for which a precedent was found in Roman Law, was formulated as a remedy for the scandal which resulted from the emergence of a numerous group of maimed and destitute persons waste product of an expanding factory system"[30]. At another place it has been remarked that in the early 19th century, when industrialisation was in its hey day and the notion of the employer's social responsibility was in abeyance, it was not realised that uncompensated industrial accidents are a social problem. Towards the end of the century, public opinion became conscious about it. It was then that French Jurists, adapting a precedent of Roman Law, evolved the principle of occupational risk [31].

The majority of the national laws of various countries regulations on compensation for industrial accidents today are based upon the principle of occupational risk, though it has not been followed out to its logical conclusions everywhere and the various systems of national legislation contain important limitations and exceptions to the principle. A very important and noteworthy feature of the new system, called the workmen's compensation system, is that it is a sort of compromise. Under this, the employer surrenders the right of protection offered to him by common law in the event of accidents not attributable to his own fault, and the worker also gives up his right to some portion of the total compensation to which he would have been entitled if the accident were due to the fault of the employer, in order to obtain the benefits of compensation in cases where accidents are caused by his own unintentional

fault, chance, force majeure, or by unknown causes [32]. As the whole system is based upon idea of compromise, the burden of the same is shared by the employers and the workers and that's why most of the national laws provide as compensation, only a part of the wages lost by the latter and not the whole of the same. If this important characteristics of the system of workmen's compensation is not clearly understood, it is never possible to appreciate the true significance of the scales of compensation under the different national laws.

The progress of the idea of compensation for accidents had been rather slow in India. As far back as 1884, workers in Bombay made a demand for compensation in petition to the Government of India, but nothing came of it. It is true that some generous employers paid compensation voluntarily to their workmen out of accumulations of unclaimed wages fines etc., but their number was not large [33]. However, in 1885 an Act was passed known as Fatal Accidents act, which enabled the dependants of a workman to see his employer in the case of a total accident. The suit had to filed in a civil court and this meant heavy expenses and prolonged delay. Further, owing to their ignorance and helplessness, such dependants had not the courage to see the employers and even when they did see, there were only slender chances of success against the superior resources of the employers and because of the unfriendly attitude of some of the judges towards the working class during the 19th century. An employer could not be held responsible, under this Act, for an accident, which was not caused by any wrongful act, neglect or default on his part, or was due to machinery that was obviously dangerous.

Because of all these defects the Act remained a dead letter and was seldom invoked [34].

In 1910, the Indian workmen's association of Bombay again raised the demand for compensation but it was not before 1920, (the year in which the All India Trade union congress - a powerful organisation of workers was established) that it was seriously considered by the Government of India. In 1922, the first legislative measure in this connection was taken when a new section 43-A was inserted in the Indian Factories Act, giving power to a criminal court to order the whole or part of a fine imposed in respect of an offence causing bodily injury or death to be paid as compensation to the injured person or in case of death to his legal representative [35]. This was followed by the enactment of the workmen's compensation Act - 1923 which received the assent of the Governor - General on the 5th March of that year. This Act, which has been subsequently amended on several occasion, is still in operation and barring the limited number of industrial workers covered by the employees State insurance Act - 1948 it was provides "for the payment by certain classes of employers to their workmen of compensation for injury buy accident" even today. It is, therefore, rightly given a very prominent place in the Labour Code of India.

Notes

1. I. Qadeer and D. Roy, "Work, Wealth and Health - Seciology of worker's health in India", social scientist, (vol no. 192-193), 1989, PP.56
2. R.P. Dutt, " India Today" P.187.
3. Ibid - P. 204
-. Supra - Note - I at P.62
5. Sowers& Somere, "Workmen's Compensation" p.7.
6. Wilson & Levy, "Workmen's Compensation", Preface, p.vii.
7. D. Banerji, "Poverty, Class & Health Culture in India", Prechi Prakashan, N. Delhi (1981).
8. Shiela Zurbrig, "Rakku's Story", George Joseph, Madras 1984).
9. Goran Djurfeldt & S. Lindberg, "Pills Against Poverty: A Study of Introduction of Western Medicine in a Tamil village", Mac Millan India, N. Delhi - 1980.
10. Imrana Qudeer, "Health Services System in India: An Expression of Socio-Economic Inequalities", Social Action, vol.35, July-Sept. 1985, pp.199. 223
11. Supra - Note - I, p 85.
12. Quoted by M.P. Jain, "Outlines of Indian Legal History" 517, (1972).
13. S.R. Chaudhuri, "Social Security in India & Britain". The World Press - Calcutta, 1962, p. 13.
14. Wilson & Levy, vol. I, p. 37.
15. Report of the Workmen's Compensation Committee (1904), p. 11.
16. Holman Gregory Committee Report, pp. 17.
17. Ibid, p. 37.
18. Ibid, p. 38.

19. I.L.O. - Compensation for Industrial Accidents (1925), p. 1.

20. Tried in the Exchequer Court in 1837, some details of the case will be found in J.L. Cohen's, "Workmen's Compensation in Great Britain, (1924), p. 86.

21. Hutchinson vs. York & Newcastle Railway, 1850 .

22. Robson, "Social Security" (3rd ed.), p.15.

23. Wilson & Levy, vol - I, p. 27.

24. Rosalind Chambers, "Workmen's Compensation", p. 62.

25. J.C. Cohen, "workmens Compensation in Great Britain" (1924), p. 85.

26. I.L.O. - "Compensation for Industrial Accidents", p. 3-3.

27. Ibid, p.4.

28. I.L.O. - "ILO & Social Security" (1936), p. 27.

29. I.L.O. - "Approaches to Social Security" (1942), p. 30.

30. Ibid, p. 65.

31. I.L.O. - Compensation for Industrial Accident", p. 7.

32. S.G. Panandikar, "Industrial Labour in India," p. 136 & Ahmad Mukhtar, "Factory Labour in India", p. 76.

33. M.R. Idgunji, "Social Insurance & India", (1948), p. 234.

34. I.L.O - Industrial Labour in India", (1938), p. 103.

35. Ibid, p. 105

CHAPTER - 4 CONTINUITY AND CHANGES IN THE WORKMEN'S COMPENSATION SCHEME IN INDIA

The Workmen's Compensation Act - 1923 falls in that category of legislation which has its roots in the theory that a state can not be a mute spectator to the suffering of the working class engaged in factories or establishments and who are exposed to various risks to their body and their lives. The object of the Act was to make provisions for the payment of compensation by certain class of employers to their workmen for injury by accident. The reason that compelled the initiation of the Bill were attributed to the growing complexity of industry with increasing use of machinery and consequent danger to workmen along with the comparative poverty of workmen themselves that rendered it advisable that they should be protected as far as possible from hardship arising from accidents.

Originally, the Act was applicable to workers employed in the railways (with certain) exceptions) and persons employed either by way of manual labour or on monthly wages not exceeding Rs. 300 in factories, mines, docks and ports, tramway services, major construction work, fire brigade etc. It also covered persons employed as the master of registered ship or as a seaman.[1] The workmen (as defined in the Act) were entitled to compensation from the employer in case of personal injury caused by accidents arising out

of and in the course of employment with certain reservations relating to the duration of incapacity and negligence of the workman himself. The payment of compensation was mainly dependent upon the incapacity or disablement of workmen. Any claim for compensation was to be determined in accordance with the provisions of the Act and rules made thereunder by the provincial commissioners for workmen's compensation. It was not necessary that the accident should have been caused by some wrongful Act of the employer compensation was payable only when the conditions provided by section - 3 are fulfilled and the procedure prescribed by section - 10 has been adopted in making a claim to compensation.

Since its enactment, the Act has been amended a number of times to enlarge its scope with a view to cover categories of workers in its ambit and to remove number of ambiguities and minor defects which had come to light in the course of administration of the Act. The amendments in the Act has also been necessitated due to rise in cost of living in the recent past and to incorporate the recommendations of the Indian Labour conference by raising the amount of compensation to the workers involved in the accident. [2] The Act was amended firstly in 1933 by the Workmen's Compensation (Amendment) Act - 1933 and then after in 1938, 1946, 1959, 1962, 1976, 1984, & finally in 1995.

Commenting upon the extremely limited scope of the original Act. of 1923, the Royal Commission on Labour in India in 1931 observed: "The Act aimed at the inclusion only of workmen whose occupations were 'hazardous' and who were engaged in industries which were more or less organised [3]. The Commission objected to these criteria and indeed, to any other limitation on the classes of workmen covered by the Act on the ground that the effects of an accident upon a workman or his dependants bore little relations to the nature of the establishment in which he had been employed. The Royal Commission also argued that while it was true generally that accidents were more frequent in organised industries than in other occupations, there were branches of employment which were not organised but which were distinctly hazardous. Further the fact that an industry was not hazardous that is accidents in it were infrequent, in no way mitigated the effects of an accident when it actually occurred; if a workman was killed in a non-hazardous occupation, his dependants suffered no less hardships because the accident was an unlikely one. While thus advocating on these grounds, an extension of the scope of the Act, the Royal Commission also noted the various practical difficulties in the way of accepting an all-embracing definition of 'workman' in India. It said "For the mere enactment of a law giving the employees the right to certain compensation would certainly fail to prove effective, unless some form of compulsory insurance were adopted and we do not think, in the present circumstances, such a step

is reasonably practicable. The expenses of collecting premia from a large number of small rural employers, most of whom carry on their work far from any important centre, would necessitate charges much higher in proportion to the risk involved than those at present levied from the large employers; and it would be almost impossible to secure effective administration of the Act".[4] Having carefully considered all aspects of the problem, the Commission recommended that the method of advance should be to include first workers in organised branches of industry, whether these were hazardous or not, and secondly to extent the Act gradually to workers in less organised employment, beginning with those who were subjected to most risk. They also advocated the immediate inclusion of certain categories of workmen and concluded their discussion on this subject by suggesting that the extension of the Act should not cease or be suspended with the inclusion of those classes and expressing the hope that the government of India would continue to add fresh classes as further experience became available.[5] According to the estimate by the Commission, if the definition of the term 'workman' were extended as per their recommendation, another two million workers would come within the scope of the Act, in addition to some four million already covered (i.e. in 1931).

The Government of India fully accepted the Royal Commission's recommendations and the Amending Act of 1933 greatly enlarged the scope of the Act, replacing the original schedule - II by a new schedule. Additions

have been made to the schedule from time to time, notably in 1938 and 1959 and these have also been indicated in Appendix - 4 of the Act. By the original Act, power was given to the Government of India to include by notification any other classes of workmen who were employed in occupations declared to be hazardous. This power was transferred by the Government of India to the provincial government in 1937 and since 1950, this power is being exercised by the state governments as the successors of the latter.

Besides there was another defect in the scheme. Suppose the worker who dies in harness, leaves an ignorant dependant, who will claim the compensation? The Labour Commission's Report too raised this point. It says, "these are still cases where compensation for fatal accidents should be and is not claimed; and it is our opinion that, unless steps are taken to give some assistance to dependants in the matter, it will be long before they are able to take full advantage of the Act. In many cases they live hundreds of miles from the industrial areas and they communicate only at long intervals with the workmen whose dependants they are on occasions they must be ignorant of his whereabouts and they may not hear of his death until some time has elapsed."(6)

It was perhaps Professor Adarkas who first suggested in 1946 in his report that 'workmen's compensation must be taken out of the hands of the employer and subjected to compulsory insurance'. For the first time he suggested that "the insurance scheme must be a part of a national programme of social

insurance under which the carrier of insurance is either the state or preferably special tripartite organisation."[7]

The Government of India appointed a study team on social security in August 1957. The team submitted its report in December - 1958. The main points of the reports were :-

First, in case of temporary disablement arising out of and during employment, 60% average wage will be paid during the period of disability. Temporary disablement benefits will not be paid for the first three days, but if it lasts for more than 28 days, the benefit will be paid for the first three days also. In cases of permanent, partial or total disablement a life pension depending on the degree of disability, subject to a maximum of 60% of the average wage, will be paid during the life time of the insured person. On his death this pension will be continued to the dependants as survivorship pension. Secondly, the survivorship pension benefit will be payable to the specified dependants only.

This report was not given much importance by the Government of India when the Act was amended in 1959.

It appears that all the methods which are generally adopted for limiting the coverage have been adopted by the original Indian Workmen's Compensation Act. As has been mentioned in the statement of objects and Reasons of the Bill, two criteria have been followed in the determination of the classes to be included-

(i) that the Bill should be confined to industries which are more or less organised and (ii) that only workmen whose occupation is hazardous should be included. Schedule - II to the Act has been based on these two considerations.

PROS AND CONS OF THE ORIGINAL SCHEME

LIMITATION OF THE SCHEDULE SYSTEM

In the schedule system certain occupations are listed to be exclusively covered by the Act. When a schedule is drawn of the covered occupations, the uncovered occupations are necessarily excluded from the scope of the Act. The practice of drawing a distinction between hazardous and non-hazardous occupations and covering only the former for compensation is in contradiction with the principle of occupational risk.

The Workmen's Compensation Act, for instance, originally did not apply to certain mines, whose depth did not exceed twenty feet. [8] Though the incidence of accidents in them has been quite considerable. Moreover, it is difficult to keep such schedules upto date, which is necessitated by the fact that new hazardous occupations emerge as a result of new industrial processes. With mechanisation the so-called non-hazardous occupations become hazardous. But, once a schedule is drawn, it becomes difficult to add new occupations to it. It was aptly said by Somers and Somers, that "once the lists are open and discrimination among industries is permitted it is inevitable that political

bargaining will be a more important basis for exclusion or inclusion than the degree of hazard."[9]

(II) EXCLUSION OF SMALLER ESTABLISHMENTS

The Workmen's Compensation Act also adopts the method of exclusion by the size of the establishments.[10] The Act does not apply to certain establishments belonging to the listed occupations if they employ less than a specified number of persons.

The arguement of administrative difficulty can hardly convince anybody. It is like not applying the Penal Code to remote forests and villages which are difficult of access.[11] Even an imperfect enforcement of a desirable law will be better than not to have the law at all. The inclusion of small establishments itself will go a long way in making the workers conscious of their rights and the employers more alive of their duties towards the safety of their employers. When a 'magic line' of a number of employers is drawn to exclude establishments, the law is easily evaded by the marginal firms where the number of employees fluctuates or can be shown to fluctuate. The administrative problems created by this line are not less insurmountable than those created by their inclusion. The task of finding out whether on 'any day during the previous twelve months' more than the specified number of workers had been employed or not may prove a headache for a conscientious administrating authority.

The financial burden that the workmen's compensation law may impose on the small firms raises question of wider economic and political importance . The argument may be worded thus : 'The society needs the services of these small firms and wants them to remain in the field of production, which they would not do in case they are required to compensate their employees for their work injuries." That employment injuries of the workers should be uncompensated because the society needs certain goods or services is a queer logic. If the employer alone can not bear the burden let the society also share it. Such a situation establishes the case for social - insurance. In fact, the rate of accidents in the smaller establishments is higher, and the wages of the employees lower, than in the larger ones and hence the workers are in greater need of social protection.

RISKS COVERED

The Workmen Compensation Act lays down that the employer shall be liable to pay compensation "if personal injury is caused to a workman by accident arising out of and in the course of employment.": It also provides for compensation in case a covered workman contracts any of the occupational diseases specified in schedule III to the Act, subject to certain employment conditions in respect of some of them. The Act does not give any specific definition of the term "Accident". and uses it in the popular and ordinary sense of the word as denoting an unlocked for mishap or an untoward event which

is not expected or designed. The language of the Act is not "personal injury by an accident" but. "Personal injury by accident." This means "personal injury not by design but by accident, by some mishap unforeseen and unexpected.

When a person is involved in an employment injury, it may cause (a) temporary disablement, that is a condition requiring medical treatment and rendering him temporarily incapable of work; (b) permanent partial disablement reducing his earning capacity only partially but permanently; (c) permanent total disablement rendering him permanently incapable of doing all work, which he was capable of performing before being involved in the injury, i.e. a total loss of earning capacity judged by certain specified standards; or (d) death. The Workmen's Compensation Act provide for compensation in all the four contingencies.

EMPLOYMENT INJURY

The Workmen's Compensation Act cover only employment injuries, that is injuries arising out of and in the course of employment. This phrase was borrowed from the British Compensation Act of 1897, and has caused as much hardships and injustice to the injured workmen in India. To arise out of the employment, the accident must be sustained while the injured persons engaged in doing something which it was his duty as part of his employment to do; and to be in the course of his employment it must take place during the

time he is engaged in his employment. The purpose of this provision is that the employer's liability to pay compensation should be confined only to those cases in which a casual relationship can be established between the injury and the employment. The employers have, however tried to take advantage of this provision as much as they did of the common law defences in the pre-compensation era. It has given rise to a vast volume of litigation and the confusion has been compounded by lack of continuity of interpretation on the part of the administrative agencies and by conflicting and incompatible court decisions.[12]

OCCUPATIONAL DISEASES

The Workmen's Compensation Act, also covers, although inadequately, personal injury caused by occupational diseases like that caused by industrial accidents. The disabling affect of such diseases is similar to that of the accidents but the problem of coverage is much more difficult. The diseases differ from accidents in the manner in which the injury is caused. While in the case of the accidents, the injury is sudden and often easily perceptible; it is gradual and imperceptible, at least in the early stages, in the case of the diseases. But, once the disease has taken root, its consequences are in no way less serious than those of an accident. There is no reason why a disability that overtakes a man suddenly should be compensable and one that comes after a period of slow poisoning should not. In order that an injury may be treated as a compensable employment injury, a causal relationship has to be established

between the occupation in which the person is employed and the diseases or substances that has caused the injury. In the case of accidents it is enough to make an injury compensable if it arose out of and in the course of employment; it need not inhere in the occupation. Very often the physical condition of the injured person is responsible for the injury to a far greater degree than anything else. In all such cases the injury will be compensable if it arose out of and in the course of employment. "Recent cases have made it clear that the requisite causal nexus between injury and employment is not to be measured by common law tort standards.[13] In the case of compensable injuries caused by diseases, the occupation should be not the 'contributing' cause but the 'proximate' cause, rather the sole cause, of the disease. The difficulty of covering occupational diseases is mainly of establishing their causal relationship. The courts, at any rate, are not expected to posses the requisite medical knowledge to determine the occupational origin of the disease. Moreover, the onset of some of these diseases is so gradual and imperceptible that in the case of a worker who has changed his employer, it becomes difficult to determine whether he has contracted the disease in the employment of the last employer with whom he is working or in the employment of any former one.

These facts, make it difficult to define the term 'occupational diseases' with the needed accuracy for legal purposes. There are however certain diseases of which the direct and indirect origin is ultimately found up with the exercise

of an occupation to such an extent that in practice it is inseparable there from: such is the case, for instance, with regard to anthrax and compressed air illness. Another category comprises a series of diseases in regard to which the causal relation between pathological disorders observed and the occupation followed is so close that it is possible without any inconvenience to regard the connection as almost incontestable; such would, for instance, be the case in regard to a worker employed in white lead works and developing lead poisoning.

THE DOUBLE SCHEDULE METHOD

In the Double Schedule Method of covering occupational deseases, the schedule shows in one column the diseases and toxic substances in respect of which compensation should be paid and in the other the industries or the processes in which the diseases or the substances enumerated may give rise to the pathological disorders of a special nature entitling the worker to compensation. The workmen's compensation (occupational diseases) convention adopted by the I.L.O. in 1925 and 1934 have also followed the same method for the coverage of occupational diseases. India has ratified the convention of 1925 but she has not been able to ratify the convention of 1934 because this convention has scheduled certain diseases which she found difficult to cover. (14)

The Indian Workmen's Compensation Act also has adopted the double schedule method for this purpose. It has divided the schedule into three parts A, B and C (see Appendix). If any person suffers from any of the diseases mentioned in part - A of the schedule and if he is employed in the particular occupation mentioned against it, his disease will be deemed to arise out of and in the course of employment unless the employer proves the contrary; in the case of any disease mentioned in part -B of the schedule, it will be so deemed if the person suffering from that disease has been employed for a continuous period of not less than six months in the employment specified against it. In case of part-C of the schedule, different periods of employment have been specified for different diseases.

The Act authorises the state governments to add to the schedule for their respective jurisdiction but this power has been exercised only by a few states.

An introduction of new industrial processes is giving birth to new occupational diseases, which were hitherto unknown and thus the upgrading of occupational diseases schedule is a continuing process. Schedule - III to Workmen's Compensation Act - 1923 for that reason has been amended several times already in 1938, 1959, and 1962. Again in 1984, by an amendment occupational diseases covered under the Act have been increased to 34 as against 22 earlier [15],

However, there is always a time gap between discovery and inclusion of an occupational diseases during such time gap, he is likely to fail in his claim or account of inadequacy of proof of occupational origin of the disease. Even extention of the schedule would not solve the problem fully because main difficulty here lies in the lack of medical expertise. [16] On account of these problems, cases of compensation for occupational diseases, as shown by statistics in annual notes on the working of the Workmen's Compensation Act, have been relatively very few.[17] This problem can be solved by the establishment of a specialised unit of Industrial Medicine, for study and research in occupational diseases. Whenever necessary, the workmen's compensation commissioners and the court may call for the expert opinion in controversial cases. Moreover such unit may suggest ways and means to minimise the incidence of such diseases through preventive action.

BLANKET COVERAGE

The resolution concerning fundamental principles of social insurance adopted by the Havana Conference of the American state members of the I.L.O. lays down that 'national laws should provide for compensation in respect of all occupational diseases'.[18] The 'Blanket Coverage' of occupational diseases is secured by defining an occupational disease as a disease peculiar to the occupation in which the employee was engaged and due to causes in excess

of the ordinary hazards of employment. The case for blanket coverage of occupational diseases is as strong as that of covering all occupations irrespective of the degree of hazard. Once a list is drawn, it becomes difficult to make additions to it. And, as new industrial processes come into vogue and new poisons and substances are introduced into industrial processes, new diseases are likely to appear, rendering the list absolute. The fact that definite knowledge of such disease lags far behind their emergence should in fact not come in the way of blanket coverage but make the case for it much stronger.

WAITING PERIOD

Though the idea of a waiting period seems to be in contradiction with the principle of occupational risk, which requires that compensation should begin from the moment the loss occurs. Workman compensation law exclude even employment injuries from the range of benefits if the incapacity caused by than does not continue beyond a certain specified period from the day of injury. This is known as waiting period which is considered desirable to discourage malingering and to reduce the burden caused by the payment of compensation for minor accidents[19]. The original Workmen's Compensation Act of 1923 prescribed a waiting period of 10 days. According to Royal commission, this was an unusually long waiting period, but the commission expressed themselves against the abolition of the waiting period as that would have resulted in a very large increase in the number of petty claims and also rejected the idea

of dating back on the ground that it usually led to malingering. As a compromise, the commission recommended the reduction of the waiting period from 10 to 7 days with no dating back. The Government of India accepted the recommendation and gave effect to it by the Act of 1933. The condition of waiting period of 7 days caused a heavy loss of benefit to the workers. In certain industries the incidence of injuries which cause temporary incapacity of less than seven days is very high. The Rege Committee has mentioned in this connection the case of glass industry, in which the commonest accidents are those arising from cuts and burns, most of which heal up within the waiting period of 7 days and the employers escape all liability.[20] Although a waiting period seems desirable to exclude minor injuries, a period of seven days was rather too long. Sometimes, the worker would return to his work before the injury was fully healed up, to avoid the loss of earnings and a minor injury might take a serious turn when neglected. The study group on social security (1958) had recommended a waiting period of only three days with a provision for retroactive payment if the disablement lasted for more than 28 days. The Workmen's Compensation (Amendment) Act - 1959, has now reduced the waiting period to 3 days and has also provided that if the disablement lasts for 28 days or more, the compensation shall be payable from the date of the disablement.

BENEFITS UNDER THE ACT

For the purpose of payment of compensation, the usual classification death, permanent disablement and temporary disablement - has been followed in India since 1923. The rates of compensation laid down in 1923 were, however, revised in 1933 and then minor amendments were made in 1946 and 1958. Major changes were later brought in by later amendments in 1984 and 1995.

The following are the rates as of now

(I) WHERE DEATH RESULTS FROM INJURY

An amount equal to 'fifty percent'[21] of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount 'fifty thousand rupees' [22] whichever is more.

(ii) Where Permanent Total Disablement results from the Injury

An amount equal to 'sixty percent'[23] of the monthly wages and the injured workman multiplied by the relevant factor; or an amount of 'sixty thousand rupees'[24] whichever is more.

(iii) Where Permanent Partial Disablement results from the injury

(a) in the case of an injury specified in part - II of schedule - 2, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (b) in the case of an

injury not specified in schedule - 2, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

(iv) Where temporary disablement, whether total or partial results from the injury

a half-monthly payment of the sum equivalent to twenty five percent of monthly wages of the workman, to be paid in accordance with the other subsection of the Act.

CONDITIONS FOR THE GRANT OF BENEFITS

In conformity with the usual practice, the WORKMEN'S COMPENSATION system also has made the fulfilment of certain conditions essential for the payment of compensation. Two of these conditions are (i) that the incapacity must be for a period longer than the waiting period - 3 days since June - 1959 and (ii) that the injury, unless, it is fatal, must not be due to the influence of drink or drugs or the wilful disobedience by the workman of an order or a safety rule or the wilful removal or disregard of a safety device.

The next condition is with regard to the giving of the notice of the accident to the employer and the filing of the claim. According to the original Act, a notice had to be given to the employer as soon as practicable after the happening

of the accident and before the workmen voluntarily left the employment in which he was injured.[25] The Act of 1938, however deleted the latter requirement and now notice has only to be given as soon as practicable.[26]

Another important condition for the payment of benefits under the Act is that the workman must not have instituted a suit in a civil court for damages in respect of his injury. This is clearly laid down in section 3(5) of the Act which also says that no suit for damages shall be maintainable by a workman in any court of law in respect of any injury (a) if he has instituted a claim for compensation before a commissioners, or (b) if the workman and the employer has already made an agreement for the payment of compensation in accordance with the provisions of the Act. These provisions as well as that contained in section 19(2), viz. that no civil court shall have jurisdiction to settle decide or deal with any matter which is required by this Act to be settled, decided or dealt with by a commissioners, thus clearly indicate that in India, the injured person or his dependants are entitled to take action only under the Workmen's Compensation Act and no other alternative is available to them. The adoption of this exclusive remedy principle seems to here placed the Indian workman under some disadvantage.

Administration of the Act : Powers of the workmen's compensation commissions

The administration of the Act has been placed in the hands of workman's compensation commissioners who have been invested with very wide and discretionary powers which they exercise in accordance with the provisions of the Act and of Rules made these under. These include ' the reception and settlement of claims to compensation, not settled by agreement, the revision of periodical payments, the appointment of compensation to dependants in cases where the injury resulted in death and in certain after cases [27] and also registering agreement for lump sum payments.

DISTRIBUTION OF COMPENSATION

In the matter of distribution of compensation also the commissioner has a great part to play. The Act specifically provides that compensation payment is case of a fatal injury and any other payment of a lump sum as compensation to a woman or a person under a legal disability, should only be made by deposit with the commissioners and 'no such payment made directly by employer shall be deemed to be a payment of compensation.'[28]

MEDICAL ASPECTS OF WORKMEN'S COMPENSATION

In the administration of workmen's compensation the medical profession has a vital role to play. Important issues like the diagnosis of the occupational diseases and the question whether it arose out of the nature of the workman's employment are decided on the basis of the advise and report of the doctors. It is again they who, in case of an application for commutation of periodic payments, estimate the probable duration of disablement. Similarly, the determination of the nature and degree of disablement in case either of temporary or permanent incapacity is their responsibility. The success of the workmen's compensation system in our country depends in the final analysis on the efficiency as well as the integrity of the medical profession.

The doctors are appointed and paid either by the employers or by the social security authorities and might think that their first loyalty is to those who pay then. If this is their attitude there is very little chance of the injured workman getting justice and fairplay in their hands.[29]

PHYSICAL AND VOCATIONAL REHABILITATION OF DISABLED WORKERS

One of the glaring shortcomings of the Indian Workmen's Compensation Act is that it does not make any provision for the medical treatment of the disabled workers on for their physical and vocational rehabilitation. In the absence of this provision the injured worker has to undergo great hardship

and suffering till he receives the compensation amount and when he receives it, a substantial portion of it goes to meet the expenses of treatment. Sometimes a permanent disability is entirely due to want of medical care and surgical treatment of an ordinary injury at the proper time. This is why the I LO convention has laid down that compensation should be made both for loss of earning and the cost of medical treatment.

EVASION OF THE ACT BY THE EMPLOYERS : PROBLEMS OF ENFORCEMENT

A.N. Agarwala, an eminent authority on social insurance in India writes, 'It is a fact recognised by all that the Workmen' s CompensationAct has been evaded on a stupendous scale.[30] There is not much evidence in support of the contention that evasion is still going on in a fairly large scale as very little work has been done on actual rate of accidents and compensation sought. This brings us to an enumerate and look into some of the probable causes of the alleged evasion of liability by the employers :-

(I) IGNORANCE OF THE WORKERS

Indian workman are mostly illiterate and ignorant and the majority of them probably don't know much about the compensation laws and the procedure to be followed in presenting a claim.[31]

(II) UNEMPLOYMENT AS A FACTOR

A second factor contributing to the unsatisfactory position of the working of the Act in India is the fear of losing the job. Workers are often faced with the embarrassing alternatives of pressing their claims for compensation and losing their jobs afterwards or of accepting whatever is offered by the employer as an Act of charity but with the assurance of continuance in service what is usually done by the employers is to give an assurance to the injured workman that if he does not press his claim, he would be allowed to continue on recovery.[32] Because of the rampant unemployment, when the workers are faced with the choice between retention of job and discharge with some compensation, there is no doubt that they chose the former and forego the compensation completely.

(III)TRADE UNION INACTIVITY AS A FACTOR

For the poor implimentation of the Workmen's Compensation Act some reserachers propose that the factor of importance is the absence of a sufficiently large number of well-organised trade unions in India which can help the workers in presenting and winning their claims. A very few of these trade unions have ever taken any keen interest in the handling of workmen's compensation claims on behalf of their members[33]. Though this may be true for the unorganised sector, the trade unions in the organised sectors do exist. Their major challenge however, is to preserve jobs, wages and bonus and this weakens their strength in fighting for adequate compentation or occupational health.

(IV) QUESTION OF FREE LEGAL AID

Many factors make large scale evasion of the Act possible, one of which is the want of legal advice and financial support in case of litigation. In the case of the death of migrant worker sometimes it becomes impossible for his dependants, who may be living in a remote village of some other state, to claim compensation. The Bihar Labour Enquiry committee had recommended that the state should provide free legal advice to the ready workers if their claims were contested; this was also endorsed by the Rege committee. In view of the fact that the wages of most of the industrial workers involved in accidents are comparatively low and that the employers contest the claims of the workers in almost all the cases which offer even the slightest possibility of escaping the payment of compensation. The provision for free legal advice and financial help seems all the more necessary.

(V) ABSENCE OF A PROPER MACHINERY FOR ENFORCEMENT

Lastly, it may also be pointed out that the lack of a suitable machinery for administration has been largely responsible for the failure of the Act to protect the interests of the workmen. As noted earlier, the commissioners have been entrusted with a very heavy responsibility. But in no state have they been given a suitable staff and office to enforce the Act effectively. In some of the states, the labour commissioners or the District Magistrate hold

in addition to their own heavy duties, the office of the workmen's compensation commissioners. Moreover they have no separate establishment and no inspectorate to secure effective enforcement of the Act. It is no wonder that in such a situation, the employers who always resent any additional burden on this shoulders for whatever reasons it might be would go on recklessly evading the Act.

SOME STATISTICS ON THE OPERATION OF THE ACT

In the second part of our study, which we propose to begin in the next chapter, we would turn our attention to the other Indian scheme for industrial injuries operating side by side with the workmen's compensation system, viz. the one set up under the Employees State Insurance Act of 1948 as part of a unified social security programme. As this Act is also like the one for workmen's compensation largely based on the British National Insurance Acts of 1996. We shall first study the evolution of ESI. Act 1948 and then pass on to a study of the working of the Indian employment injury scheme under the ESI Act of 1948.

The progress of the compensated injuries and the amount of compensation paid under the Workmen's CompensationAct, can be judged and noted from Table 1. This table shows a declining trend in injuries leading to death and temporary disablement. The payment of compensation on injuries leading to death are registering decline. The permanent disablement injuries are recording

moderate declining trend. The conclusion would have been more real and concrete but in the absence of up-to-date statistics. Unfortunately the statistics regarding this is not complete. It is perhaps because the labour bureau, Shimla which compiles it does not receive the adequate information/ data from the states for the purpose well in time. This apart, the Workmen's Compensation Act is gradually being replaced by the E.S.I. Act 1948 and therefore it seems that half-hearted attention is paid for compilation of its statistics.(34)

Table 1.

Number of Compensated Accidents and The Amount of Compensation Paid for Establishment Submitting Returns, during 1984-1995

Year	Average daily no. of workers employed inestablish ments submitting returns	Death	Permanent disablement	Temporary disablement	Total	Death	Permanent disblement	Temporary disablement	Total
1	2	3	4	5	6	7	8	9	10
1984	4,778,030	1,021	1,733	25,290	28,044	2,19,77,498	79,22,965	71,82,497	3,70,82,960
1985	2,367,343	594	5,469	14,483	20,546	1,96,42,776	63,71,272	72,58,735	3,32,72,783
1986	3,691,589	536	2,111	22,572	25,219	2,47,12,262	97,09,153	58,81,796	4,03,03,211
1987	1,948,616	480	1,109	14,035	15,624	2,08,47,040	1,01,28,796	1,23,52,721	4,33,28,537
1988	9,67,870	354	1,675	93,008	95,037	1,55,62,896	64,38,245	51,82,854	2,71,83,995
1989(P)	4,502,317	1,151	2,384	167,583	1,71,118	6,12,37,967	2,20,24,372	1,74,33,365	10,07,55,70
1990(P)	3,710,534	1,199	1,266	12,615	15,080	5,65,68,420	1,53,07,630	1,16,82,020	8,35,58,070
1991	3,669,567	1,409	1,538	10,597	13,544	7,20,86,409	2,46,39,445	1,03,68,619	10,70,94,4
1992	3,041,244	1,503	1,365	7,377	10,245	8,07,43,217	2,33,35,666	1,13,55,419	11,54,34,3
1993	1,255,895	474	237	3,027	3,738	1,72,83,104	64,06,690	71,41,642	3,08,31,43
1994	7,28,381	545	418	3,373	4,336	2,81,03,970	1,00,02623	36,92,491	4,17,99,08
1995	1,57,922	231	151	892	1,274	1,57,81,789	48,54,696	9,00,962	2,15,37,44

N. B : Data relate to only states Union Territories which have submitted the returns.
Source : Annual returns under the Workmen's Compensation Act, 1923, Annual Reports Ministry of Labour, Govt. of India.

Notes :

1. Workmen Compensation Act - 1923, Section -2 (1) (n) and Schedule - II.
2. Workmen Compensation (Amendment) Act - 1962 (Act - 64 of 1962)
3. Royal Commission Report, (1931), pp. 297.
4. Ibid - p. 297.
5. Ibid - p. 302
6. Report of the Labour Commission, p. 311.
7. Adarkar's Report, p. 132.
8. Clanse (v) of the Schedule - II, Before the 1959 amendment. Now it applies to all mines irrespective of depth.
9. Somers and Somers, "Workmen's Compensation", p. 45.
10. Rege Committee Report, p. 53.
11. See Occupation Nos. III, XVI, XVII, etc. of the Schedule in Appendix - I, of the Act.
12. S.R. Chaudhuri, "Social Security in India and Britain" Calcutta 1962, pp. 39.
13. Riesenfeld and Maxwell, "Modern Social Legislation", pp. 263-64.
14. The Indian Government delegate to the conference which adopted the revised convention for e.g. made a proposal for exclusion of silicosis from the list of occupational diseases because of the difficulty of diagnosis and administration. Now, it has been included by the 1959 Amendment.
15. Report on Health Insurance for Industrial Workers-Adarkar Report - 1944 recommended inclusion of industrial dermatitis and various forms of cellulitis and bursitis, p. 216.
16. The Workmen's Compensation Amendment Act 1984.
17. Report of the Labour Investigation Committee (Rege Committee), p. 257-314.
18. Punekar, "Social Insurance for Indian Workers in India (1950), p. 77.
19. International Labour Code, 1951, Vol. II, p. 671.

20. ILO and Social Insurance, p. 32.

21. Redee, Adequacy of Workmen's Compensation, pp. 181.

22. Substituted by Act - 30 of 1995, Section 4 (a) for "forty percent" and "twenty thousand" w.e.f.15.9.95.

23. Substituted by Act 30 of 1995, Section 4 (a) for "fifty percent"' and "twenty four thousand" respectively w.e.f. 15.9.95.

24. Section 10 (1) of the Act of 1923.

25. Section 5 of the Act of 1938.

26. ILO, Industrial Labour in India, p. 105.

27. Vide Section 8 of the Act as Consolidated in 1934.

28. Supra Note 12 at p. 105.

29. A.N. Agarwala "Indian Labour Problems", (1947), p. 191.

30. Bombay Report - 1939, p.5; and Bihar Labour Enquiry Committee (1940).

31. Supra Note 12 at p. 147.

32. Ibid p. 149.

33. Dr. N.H. Gupta, "Social Security Legislation for Labour in India", N.Delhi (Deep and Deep Pubs. 1986), p. 155.

34. Ibid, p. 230.

CHAPTER - 5 EVOLUTION AND WORKING OF THE EMPLOYEES' STATE INSURANCE SCHEME IN INDIA

The Indian scheme for industrial injuries viz. the one set up under the Employees State Insurance Act(ESI) of 1948 as part of a unified social security programme is based on the British National Insurance Act of 1946. So, we shall first study the provisions of the British National Insurance (Industrial Injuries) Act of 1946 and its working since 1948 and then pass on to a study of the Indian employment injury scheme under the ESI Act of 1948.

INDUSTRIAL INJURIES SYSTEM IN BRITAIN

The Beveridge Report, which is generally regarded as the foundation of the present British industrial injuries system was hailed as 'a monumental work of tremendous importance,' (1) because of the revolutionary nature of the recommendations made by it in the sphere of industrial injury insurance and of other social services. The proposals of the war-time coalition Government in Britain with regard to the comprehensive national insurance system covering all risks including sickness and disability and based on the Beveridge Report were published in a white paper in 1944. As was expected the Government made it clear that though generally agreeing with the Beveridge Report they were unable to accept some of its recommendations. The Government did

not for instance, think that a scheme of benefits based on subsistance level was practicable, for that would mean frequent variations in the benefit rates in accordance with the index of the cost of living. They concluded that the right objective was to give a rate of benefit which provided a reasonable insurance against want and at the same time took account of the maximum contributions which the great body of contributors could probably be asked to pay. In other words, they held that it must be reserved to the scheme of national assistance to fill the inevitable gaps left by insurance[2]. These proposals of the Government were debated in both houses of Parliament and in general met with approval, and a Bill 'to substitute for the Workmen's Compensation Acts - 1925-43, a system of insurance against personal injury caused by accident arising out of and in the course of a person's employment and against prescribed diseases and injuries due to the nature of a person's employment,' was formally presented to parliament on June 12, 1945, but could get the Royal assent, after being passed by both houses of parliament, only on 26th July, 1946 in the form of the National Insurance (Industrial Injuries) Act of 1946 which came into effect on the 5th of July 1948. The Act has been amended on several occasions, during the course of its operation and we give below a summary of its main provisions of the Act.

PROVISIONSOF THE ACT: LIABILITY TRANSFERRED TO STATE

Perhaps the most important change that was made by the Industrial Injuries Act in 1948 was the transference of liability for compensation to employees suffering injuries arising out of and in the course of their employment from the employer to the state [3]. Under section 58 of the Act, a fund called Industrial Injuries Fund was set up with contributions from the employers, the employers and the state and payments are now made out of this fund. The principle of employers' liability based on the doctrine of occupational risks was thus completely abandoned in 1948 in favour of the social insurance principles under which all social risks are carried jointly by the employed persons, their employers and the state.

SCOPE AND COVERAGE

The scope of the new system was from the very beginning, much broader than that of the old workmen's compensation system at the present moment, subject to certain specific exceptions, all persons employed in Great Britain under any contract of service or apprenticeship, whether written or oral and whether expressed or implied are in insurable employment within the meaning of the Act, regardless of the work they do or the income they receive. The outstanding feature of the present system is its universal coverage. It has within its scope the highest paid executive and the humblest wage earner,

persons engaged in industry, commerce, agriculture, transport and in all other types of civil employments.

RISKS COVERED

Under the Act, insured persons are covered against the risk of personal injury caused on or after the appointed day by accident arising out of and in the course of their employment being insurable employments[4] and against prescribed diseases, or prescribed personal injuries, which are due not to accident but to the nature of person's employment [5].

BENEFITS

The Act provides three types of cash benefits (i) 'injury benefit' for short-term disability, (ii) 'disablement benefit' for permanent or long-term incapacity and (iii) 'death benefit' in fatal injury cases. Besides these basic benefits, a large number of supplementary benefits are also paid to the insured persons. Thus, both in the case of injury or disablement benefits, supplementary allowances at prescribed rates are paid to the dependants. There are four other types of supplementary benefits payable only with disablement benefits i.e. to the victims of long term disability. These are : (i) 'Unemployability supplement' which is payable 'if as a result of the relevant loss of faculty the beneficiary is incapable of work and likely remain permanently so incapable' [6] (ii) 'A special Hardship Allowance is paid if the workman 'is incapable and likely to remain permanently

incapable of following his regular occupation; and is incapable of following an employment of an equivalent standard which is suitable in his case"[7]. (iii) 'Constants Attendance Allowance' - If as the result of the relevant loss of faculty, the beneficiary requires constant attendance by another person, a 100% disablement pension is increased upto certain prescribed limits in ordinary cases and upto double this amount in exceptionally severe cases[8]. (iv) Hospital Treatment Allowance ;- If a person receiving a pension for disablement assessed at less than 100%, enters any hospital or similar institution for the purpose of receiving approved hospital treatment, his pension is paid at the rate appropriate to a 100% disablement for the period during which he is in hospital[9].

BENEFIT CONDITIONS

There are a few conditions regarding the grant of benefits. Thus, in the first place, a timely notice of the accident in the prescribed manner must be given either by the insured person or by any other person on his behalf. Such a notice may be verbal or written and is to be given as soon as practicable after its happenings, giving all particulars about it. It is to be served on the employer or on the person under whom the injured person was working at the time of the accident. Secondly a claim in writing on the appropriate form and supported by relevant documents has to be made within the prescribed time limit. Next every claimant for injury or disablement benefit has to comply with

the directions of the minister given to his and requiring him: (a) to submit to medical examinations for the purpose of determining the effect of the relevant accident or the treatment appropriate to the relevant injury or loss of faculty; or (b) to submit himself to such medical treatment as is considered appropriate in his case by the prescribed medical authorities; or (c) to attend any vocational training or industrial rehabilitation course provided under the disabled persons (Employment) Act, 1944, which in the opinion of the minister of labour and National Service, is appropriate in his case.[10]

Finally, every claimant is to furnish to the authorities such certificates, documents, information and evidence as are reasonably required for determining his claim and for that purpose may be required to attend at an office of the national insurance authorities.

ADMINISTRATION OF THE SCHEME

The whole scheme is administered by the ministry of pension and National Insurance which has set up an elaborate network of offices all over the country. At the apex of the whole administrative machinery is the minister, advised by an Industrial Injuries Advisory council consisting of a chairman and representative of employers and insured persons in equal numbers appointed by the minister after consultation with the representative organisations of these interests, to whom drafts of all proposed regulations are referred for consideration and

advice. The council is also consulted on all other important questions of policy relating to the administration of the scheme [11]. The actual administration is in the hands of a large number of insurance officers and inspectors, all appointed by the minister. Besides, there are Medical Boards, Medical Appeal Tribunals and the Local Appeal Tribunals. The administrative machine set up to administer the scheme is thus very elaborate.

SUPPLEMENTARY SCHEME

Although the scheme of industrial injury insurance is designed to be as comprehensive as possible, the Act also permits further supplementation of its benefits by a supplementary scheme voluntarily agreed upon by the employers and workers in any industry and approved by the minister with or without amendments [12].

REHABILITATION

According to the Disabled Persons (Employment) Act - 1944, vocational rehabilitation of all disabled persons is the primary responsibility the ministry of Labour and National Service and Section - 74 of the Industrial Injuries Act permits the minister to make special arrangements with the ministry under which persons disabled as a result of industrial injuries may take full advantage of vocational training courses, industrial rehabilitation courses and facilities in connection with employment or work under special conditions provided

under the Act of 1944. The cost of providing these courses and facilities as well as allowances for the maintenance of disabled workers undergoing such courses may be paid out of the Industrial Injuries Fund.

MEDICAL BENEFITS

The arrangements for medical benefits under the present scheme are of a much more satisfactory nature than those under the previous workmen's compensation system. Thus medical treatment now includes medical, surgical or rehabilitative treatment and the minister is authorised to make arrangements for the provision and maintenance, free of charge or at a reduced charge, of artificial limbs or other equipments and appliances for those who need them as a result of an industrial injury [13]. All expense in this connection may also be paid out of the fund.

RESEARCH

An interesting feature of the new system is the provision for research into the causes and incidence of accidents, injuries, and diseases against which persons are insured under the Act, as well as into the methods of their prevention [14]. The minister is authorised to have such research done by persons employed by him or to make grants out of the fund to other persons engaged in such research.

ALTERNATIVE OR ADDITIONAL REMEDIES

The question of an alternative remedy in case the industrial injury arises due to negligence and default of the employer is very important. Before 1948, the injured workman or his survivor had to elect between compensation and the alternative remedy of a damage suit against the employer. The employer thus was not liable to pay both damage and compensation. The position with regard to this question was examined by the Departmental Committee on Alternative Remedies (15) set up in 1944, who suggested that the then existing right of the workmen or their dependants should be retained inspite of the introduction of the industrial injury insurance scheme. As a result, with the passage of the Law Reform (Personal Injuries) Act 1948. The right to damage suit has become an additional, rather than an alternative remedy. The worker now does not have to elect between and proceeding under the Industrial Injuries Act and an action for damages. It is possible for him to claim benefits under the new Act and also to pursue simultaneously a remedy for damages against his employer. The right of additional remedy thus makes the position of the injured workman in Britain a really enviable one.

EVOLUTION OF EMPLOYMENT INJURY UNDER A UNIFIED SOCIAL INSURANCE SCHEME IN INDIA

The Workmen's Compensation Act - 1923 became an important means in the system of social security for labour for about a quarter of century. The subject of health insurance for industrial workers was first discussed by the Indian legislature in 1927 when the applicability of the conventions adopted by the International Labour Conference at it is tenth session to India was considered by the Government though the government recognised the necessity of making provision for sick workers, it expressed its inability to sponsor a health insurance scheme, the plea put forward by it was that practical difficulties will come in the way of the successful implementation of the scheme.

THE ROYAL COMMISSION SCHEME

A Royal Commission on Labour was appointed in 1929 and in its report of 1931 stressing the need for health insurance for workers it observed : "By common consent the incidence of sickness is substantially higher than in western countries, the medical facilities are much less adequate and the wages generally paid make it impossible for most worker to get through more than a very short period of illness without borrowing. Indeed, sickness is an important contributory cause of indebtedness; for after at this time of greatest need, the worker may find himself destitute of resources, unable to take proper

measures to restore his health and difficulties regarding even the means of subsistence. The situation calls for the exploration of all methods that may lead to the alleviation of existing hardships."[16]

Though the commission realised that the difficulties in the way of a health insurance scheme for the workers were many and formidable it proposed a tentative scheme. The main features of this scheme as enumerated by Idgunji were :-

(i) The scheme was to operate on the basis of single establishments (where they were large enough) and small establishments might be combined for the purpose.

(ii) The responsibility for the medical and the cash benefit was to be separated; the former was to be undertaken by the Government possibly on a non-contributory basis and the latter through employers on the basis of contributions made by themselves and the workers.

(iii) With regard to sickness allowance, the employers were to deduct a certain percentage of wages, to credit this to a fund and to add thereto contributions of an equal amount and more in the case of poorly paid workers.

(iv) The worker was to be entitled to a proportion of his wages to be paid by the employer from the fund during the period of the sickness.

(v) The responsibility of looking after the supervision and audit of the funds was to rest with the state. [17]

But, no action was taken on the recommendation of the Royal Commission by the government.

In the 1930's, the then provincial Governments of British India initiated the process in the direction of evolution of comprehensive social security system, by appointing Committees. For example, Bihar Labour Inquiry committee, 1938; and Bombay Textile Labour Inquiry committee stressed the need for a Compulsory and Contributory Sickness Insurance Scheme.

THE SCHEME OF GOVERNMENT OF BOMBAY

The Government of Bombay prepared a scheme of sickness insurance according to which every industrial worker was given the legal right to three or four weeks sick leave with pay every year. The unutilised leave could be turned into cash which was to be handed over to a fund to be maintained by the Government The amount thus accumulated could be drawn by the worker either on his retirement or on reaching a particular age or by his relative if he died during the period of service. The scheme, however was inadequate as it failed to provide for medical benefits.

The matter of social insurance was subsequently discussed at Labour Ministers Conference held in Delhi in 1940, 1941 and 1942. Though all this aroused enough consciousness for improving social security, yet a more important and decisive step was the appointment of Prof. B.P. Adarkar in March 1943 to frame a scheme of social insurance for industrial workers. Prof. Adarkar submitted his report on 15th August 1944 and recommended a compulsory contributory health insurance scheme for industrial workers based on the I.L.O conventions.

ADARKAR'S SCHEME

Some of the main principles followed in preparing the scheme were that the scheme must be compulsory, contributory as far as possible, simple, clear, financially sound and easy to be administered and flexible; that it must neither be repayment to the existing labour legislation or the International Labour Conventions nor be very ambitious and that it must aim at minimising disputes and litigation and at the same time close all loopholes for malingering, collusion and commission of offences.

The scope of the scheme was restricted to three major industries - textiles, engineering, and minerals and metals. All the perennial factories except those falling under scheduled exceptions like employment in the armed forces, public departments, public utility concerns etc. were covered by the scheme.

As regards administration, the report recommended a scheme which combined the territorial basis with appropriate representation of the contributing parties, beneficiaries and the doctors. It was suggested that the scheme should be administered by a statutory corporation to be called the Central Board of Health Insurance. The structure of this corporation was to be pyramidal. At the apex was to be the central Board with the Labour Minister as its chairman and at the base the advisory regional boards and the local committee.

The Government of India thought it fit to obtain expert opinion on the report submitted by Prof. Adarkar before taking any action on it and requested the International Labour office to send a deputation to examine the scheme. In response to this request, Messrs. M. Stack and R. Rao of the International Labour Office came to India in 1945 and prepared a note on Prof. Adarkar's report.

STACK AND RAO SCHEME

The two experts agreed with the fundamental principles enunciated by Prof. Adarkar. The chief modifications suggested by them were (i) the separation of the medical and the cash benefit (ii) the integration of maternity benefit and workmen's compensation in the health insurance scheme and (iii) the extension of the scheme to all perennial factories covered by the Factories Act, and to non-manual workers.

The main features of the scheme were (i) grouping together of all branches of social insurance which require medical service like sickness, child birth and employment injury, (ii) covering all the risks by a single all inclusive contribution, (iii) extending the medical benefit to the families of the workers and (iv) cash benefit to be sufficient for subsistence and proportioned to the normal standard of living of the lower and middle classes.

Further, the Tripartite Labour Conference held in September 1943 passed a unanimous resolution for formulating a plan for improved social security system. Persuant to this resolution the Labour Investigation Committee was appointed by the Government of India under the Chairmanship of D.V. Rege to investigate the risks. Again the Government of India appointed in October 1943 a Health Survey and Development Committee under the chairmanship of Sir Joseph Bhore to prepare a plan for medical case and health services. The cumulative effect of all these exercises was the drafting of Workmen's State Insurance Bill, 1946 which was largely based on the Adarkar Report and the modifications and alterations suggested by the Stack and Rao Scheme. The Government of India introduced the Bill in the Central Legislative Assembly on Nov. 6, 1946. It was referred to the select committee on 22nd Nov. 1947. The select committee submitted its report on the 11th Feb. 1948 making substantial improvements in the original Bill. Finally the Act was passed on 2nd April

1948; and it received the assent of Governor General on 19th April 1948 and became law in the form of the Employees' State Insurance (ESI) Act 1948, which is regarded as the first measure of social insurance in the country and the first major social security programme in the south East Asia.[18]

E.S.I. SCHEME

Coverage

The Employees State Insurance Act 1948, applies in the first instance to non-seasonal factories using power and employing 20 or more persons. The Act contains a provision under which the 'Appropriate Government' (central or state Government) is empowered to extend the provisions of the Act to other classes of establishments; industrial, commercial, agricultural or otherwise. Under these provisions of the Act, most of the state Government have extended the ESI scheme to new classes of establishments such as shops, hotels, restaurants, cinemas, road motor transport undertakings and newspaper establishments employing 20 or more persons.

After enforcement of the provisions of the ESI (Amendment) Act, with effect from 20th Oct. 1989. The Act is now applicable in the first instance to non-seasonal factories using power and employing 10 or more persons and non-power using factories and specified establishments employing 20 or more persons.

As of now employees of covered factories and establishments in receipt of wages not exceeding Rs. 6500/- per month are covered under the ESI Act in areas where the scheme has been implemented over the years.

EXEMPTION FROM THE OPERATION OF THE ACT

The exemptions under section - 87 of the ESI Act can be granted to any factory or establishment or class of factories or establishment or class of factories or establishments, who provide social security benefits to their employees superior or similar to those available under the ESI scheme.

FINANCES

The scheme is mainly financed by contributions from employers and employees. The employers contribute 4.75% of the wages payable to the coverable employees and the employees contribute 1.75% of their wages towards the scheme. Employees in the lower wage group and in receipt of average daily wages upto Rs. 25/- per day are not required to contribute; the employers however contribute their share in respect of such employees also. The state Government contribute a minimum of 12.5% of the total expenditure on medical care in their respective states.

BENEFITS

The multidimensional social security cover that the scheme provides can be classified into two main categories namely: (a) Medical care and (b) Cash benefits

(A) MEDICAL CARE

Medical care is provided to the insured persons and their family members through a vast and wide spread network of panel clinics. ESI dispensaries and ESI hospitals generally within the vicinity of their residential areas. In addition to providing total in-patient care, the scheme also fully finances cases of beneficiaries requiring advanced or super speciality treatment or specialised surgery in leading medical institutions of the country.

(B) SICKNESS BENEFIT

Sickness benefit represents periodical payments made to insured person during the period of certified sickness. The maximum duration of the sickness benefit is 91 days in two consecutive benefit periods. The sickness benefit rate is approximately equivalent to 50% of the daily wages on an insured person. After availing of the sickness benefit for 91 days an ensured person is entitled to an extended sickness benefit for further period of upto 309 days and a maximum of two years in deserving cases, if he is suffering from

tuberculosis, leprosy, mental or malignant diseases or other specified long term diseases. Currently 34 long term diseases have been specified (see Appendix) for which insured persons are granted extended sickness benefit at the enhanced rates of 140 percent of the standard sickness benefit rate[19].

(C) MATERNITY BENEFIT

Maternity benefit is payable to an insured woman in case of confinement or miscarriage or medical termination of pregnancy or sickness arising out of pregnancy. The benefit is payable at twice the daily rate of standard sickness benefit rate i.e. equal to average daily wages or rupees twenty whichever is higher for a period of twelve weeks which is further extendable by four weeks on medical advice. A provision has also been made for payment of medical bonus amounting to rupees two hundred and fifty per case to insured women who don't avail medical facilities under the ESI scheme for their confinement.

(D) DISABLEMENT BENEFIT

In case of temporary disability arising of an employment injury, disablement benefit is admissible to an insured person for the entire period as certified by an Insurance Medical Officer. The benefit is not subject to any contributory conditions and is payable at a rate equivalent to about 70% of the daily average wage of the insured person. The benefit is however, not payable if the incapacity does not exceed three days, excluding the date of accident.

Where the disablement due to an employment injury results in permanent, partial or total loss of earning capacity, the periodical payments are available to the insured person for life at a percentage rate depending on the loss of earning capacity as may be certified by a duly constituted Medical Board.

(E) DEPENDANTS BENEFIT

Periodical pensions are payable to dependants of an insured person who dies as a result of an employment injury. The widow gets the benefit, during her life or until remarriage, equal to an amount of 3/5th of the disablement rate and each child an amount equivalent to 2/5th thereof until he/she attains 18 years of age provided that in case of infirmity the benefit continues to be paid till the infirmity lasts. In case an insured person does not leave behind any widow or child, cash benefit is payable to other dependants.

(F) FUNERAL EXPENSES

Funeral expenses are payable as lump sum grant upto a maximum of Rs. 1500/- to defray, the expenditure on the funeral of a deceased insured person. The amount is paid to either the oldest surviving member of the family or to the person who actually incurs the expenditure on the funeral.

(G) REHABILITATION ALLOWANCE

Rehabilitation allowance is admissible to the insured persons for each day on which they remain admitted in an artificial limb centre for fixation or

repair or replacement of the artificial limbs at the rate which conforms with the sickness benefit rate. The benefit is not subject to any contributory conditions.

(H) FAMILY MEMBERS COVERED

Under ESI scheme the medical benefits is provided not only to the insured workers but to his family members too.

ADMINISTRATIVE ORGANISATION

The administration of the scheme has been entrusted to an autonomous body known as the ESI Corporation which is constituted on the basis of tripartite representation. The Minister of Labour in central Government is the ex-officio chairman and the central minister for health is the ex-officio vice-chairman. The ESI Corporation is principally policy formulating body and governs a wide range of activities under the Act. It is composed of the representatives of various interests and has various organs constituted on the principle of decentralisation of authority and centralisation of co-ordinating mechanisms, for the effective implementation of various provision of the Act. Its organs and functionaries are the Standing Committee, Medical Benefit Council, the Director General, Insurance Commissioners, Medical Commissioners, Chief Accounts Officer and Actuary. In order to achieve decentralisation, Regional Boards and Local Committees can also be constrituted.

The standing committee constituted under section -8 is the chief executive body of the corporation to carry out the decisions of the corporation and is entrusted with the responsibility of the actual administration of the scheme subject to the general superintendence and control of the corporation. Section - 10 provides for formation of a medical benefit council. The council is advisory body to advise the corporation on subjects concerning the Medical benefits [20].

Section - 16 empowers the central Government to appoint the following principal officers for the day-to-day administration and working of the scheme : 1.Director General of the ESI, 2. an insurance commissioners, 3. a medical commissioners, 4, a chief Accounts Officers and, 5. an actuary.

The Director General is empowered to act as the chief executive officer of the corporation and to co-ordinate, supervise and control the work of other principal; officers. The Insurance Commissioners' powers and duties are, to arrange for the establishment of Insurance and Regional offices for the administration of the Act, to arrange for inspection of subordinate offices; and to investigate all complaints referred to by the regional. Boards and the local committees. The Medical Commissioner is entrusted to supervise, direct and co-ordinate the working of the medical organisation of the corporation and to make adequate arrangements for providing medical benefit to insured persons. The Chief

Accounts Officers functions are to maintain the accounts of the corporation and to arrange for the compliance of accounts by the collection of returns from the centres and regions. The powers and duties of the Actuary are to collect, compile and analyse statistics relating to the working of the corporation [21].

ADJUDICATION OF DISPUTES AND CLAIMS

Section -74 of the Act authorises the state Government to constitute one or more employers insurance course specifying its geographical jurisdiction and can regulate the distribution of business amongst them. The jurisdiction of court is with regard to the questions or disputes on the contribution, eligibility conditions, coverage rate of wages, quantum and entitlement to benefits etc. and other matters which have been well specified in section - 75 of the Act. The Employees Insurance courts shall have all powers of a civil courts for the purpose of summoning witness, production and discovery of documents administering oath and recording evidence. Employers Insurance courts may make reference to High Court on the point of law, the decision of the High Court shall be binding on it. Again, no appeal shall lie against the decision of the court on questions of fact. However, if substantial question of law is involved, an appeal shall lie to the High Court. The nature of jurisdiction of Employees Insurance court is quasi-judicial one.

WORKING OF THE E.S.I SCHEME

The ESI scheme which provides medical benefit in kind and cash benefits to the insured workers was launched on an experimental basis in 1952, in Delhi and Kanpur under the ESI Act - 1948. The scheme assumed all - India character in 1966. The latest covered strength according to 1996-97 Annual Report stands over 3,27, 66,600.

(Table 2)

Particulars	AS ON		Variation During 1996-97
	31.3.96	31.3.97	
(1)	(2)	(3)	(4)
States/Union Territories covered	22	22	-
No. of Centres	629	632	(+) 3
No. of Employees	66,13,400	77,31,650	(+) 11,18,250
No. of Insured Persons/ Family Units	73,02,800	84,45,000	(+)11,42,200
No. of Insured women	11,65,900	14,14,350	(+) 2,48,450
Total Beneficiaries	83,34,850	3,27,66,600	(+) 44,31,750
No. of Employers covered	1,90,944	2,00,471	(+) 24,400
Local offices/cash offices	789	793	(+) 4
Inspection offices	307	329	(+) 22
E.S.I. Hospitals	124	125	(+) 1
E.S.I. Annexes	42	43	(+) 1
No. of ESI Beds			
(a) E.S.I. Hospitals	18,527	18,695	(+) 168
(b) E.S.I. Annexes	842	867	(+) 25
(c) Reserved in other Hospitals	4,101	3,772	(-) 329
TOTAL	**23,470**	**23,334**	
E.S.I. Dispensaries	1,440	1,443	(+) 3
Insurance Medical Officers	6,136	6,220	(+) 84
Insurance Medical Practitioners	3,076	2,900	(-) 176
CAPITAL CONSTRUCTION		(Rupees in Lakhs)	
SANCTIONED	5,80,89,31	5,95,59,62	(+) 14,70,31
advanced	4,49,33,66	4,78,84,79	(+) 29,51,13
INCOME AND OUT-GO	1995-96	1996-97	
		(Rupees in Lakhs)	
REVENUE INCOME	7,36,58,85	8,23,47,43	(+) 86,88,58
REVENUE EXPENDITURE	5,97,91,93	5,98,21,39	(+) 29,45

Source:- ESI Draft Annual Report - 1996-97

From the point of view of the victims of employment injury or diseases, satisfactory arrangement of medical care is as important, if not more, as the provision of cash benefits. As observed in their Reports by the ESI Review Committee (1966), Committee on Perspective - Planning (1972), Committee on Labour Welfare (1969), the High Powered Sub-Committee (1978) inadequate medicare is the biggest single demerit of the scheme. An empirical study of the ESI medical arrangements in parts of Punjab and Haryana by Dr. Veer Singh, has brought to light the following conclusions regarding the organisation and working of ESI medicare:-

(i) The ESI medicare programme suffers from lack of basic infrastructure. Hospital and dispensaries are very less in number (see Table 2 also) and ill equipped to provide any satisfactory medicare.

(ii) The ESI medicare also suffers from inefficient administration.

(iii) Insured employees, by and large, are dissatisfied with the medicare programme [22].

As ESI scheme introduces compulsory contributory system of financing the scheme, it becomes necessary to assess the position of arrears of contributions and the action taken by ESI corporation. The position of outstanding dues of contribution stands as shown in Table 3. The statutory provision require depositing

regularly the contribution (Employees' + Employers') in the ESI corporation and it is mandatory for each employer to follow the pattern. However the procedural weaknesses are exploited by the employers. The problem became all the more complex when apart from the private sector industries even the public sector enterprises followed the suit. The recovery is pursued through the states revenues authorities who are otherwise very busy.[23]

TABLE 3

Number of Factories/ Establishments in Arrears of Rs. One Lakh or More As On 31.2.97

(Rs. in Lakhs)

Name of the Region	TEXTILE		JUTE		OTHERS		TOTAL	
	Nos.	Amount	Nos.	Amount	Nos.	Amount	Nos.	Amount
Andhra Pradesh	23	279.12	02	221.16	140	856.29	165	1356.57
Assam	01	24.99	-	-	43	162.15	44	187.14
Bihar	02	67.37	02	140.08	118	731.86	122	940.31
Delhi	04	27.00	-	-	33	159.13	37	186.13
Gujarat	62	1102.77	-	-	108	365.36	170	1468.13
Haryana	11	51.54	-	-	57	230.20	68	281.74
Karnataka	22	179.54	-	-	118	561.70	140	741.64
Kerala	11	56.72	-	-	147	528.17	158	584.89
Madhya Pradesh	24	2688.34	01	1.99	76	415.37	101	3105.70
Mumbai	43	899.88	-	-	352	1334.18	395	2234.06
Nagpur	07	158.80	-	-	44	161.40	51	320.20
Pune	13	375.68	-	-	88	398.93	101	774.61
Goa	-	-	-	-	22	87.87	22	87.87
Orissa	12	112.44	02	5.18	61	169.95	75	287.57
Punjab	-	-	-	-	99	376.67	99	376.67
Rajasthan	12	82.62	-	-	52	142.97	64	225.59
Chennai	13	61.26	-	-	101	366.97	114	428.23
Combatore	20	131.66	-	-	20	50.58	40	182.24
Maduari	21	112.02	-	-	30	379.05	51	491.07
Uttar Pradesh	21	1070.94	02	25.28	187	1209.22	210	2305.44
West Bengal	29	613.84	54	6148.01	295	2305.56	378	9067.41
Total	351	8096.93	63	6542.70	2191	10993.58	2605	25633.21

One pertinent point which has forever bothered the corporation is, the falling standards of efficiency and effectiveness of the scheme. The disenchantment with the scheme is so great that many factories and units have asked from the exemption of the scheme. Trade unions have on a number of occasions complained about the poor quality of benefits admissible under the scheme and have pleaded for enhancing the rate of cash benefits.[24]

All these drawbacks in the ESI scheme points out towards the fact that the process of replacement of the Workmen's Compensation Act By the ESI Act in the name of collective responsibility and functioning has not only levied a higher fee on the workers but also diverted all attention from the primary responsibility of industrialists for working conditions from the employers liability for injury and diseases suffered by the workers.

Notes :

1. Hansard, Vol. 386, p. 2010.
2. S.R. Chaudhuri, "Social Security in India and Britain", World Press, Calcutta (1962) p. 286.
3. Dr. Veer Singh "Industrial Employment Injuries, An over view of the Legal Protection System, p. 269, N. Delhi - 1986.
4. Section 7, of the National Insurance (Industrial Injuries) Act 1946 of Britain.
5. Section 55-57 of the Act.
6. Section 13 of the Act.
7. Section 14 of the Act.
8. Section 15 of the Act.
9. Section 16 of the Act.
10. Claims and Payments Regulations ; Reg. 4.
11. Section 61 of the Act.
12. Section 83 of the Act.
13. Section 75 of the Act.
14. Section 73 of the Act.
15. Also known as Monckton Committee - 1944.

CHAPTER - 6 DISCUSSION AND CONCLUSION

We have done a detailed study of the two Indian schemes regarding industrial injuries and of their achievements and failures. We have also briefly studied and compared the British schemes for the compensation and insurance of industrial injuries which provided the basis of evolution of our own legislation in this area. In this chapter we shall first compare the two Indian schemes and the role that State has in their evolution and implementation. Then we will attempt to draw some conclusions.

THE TWO SYSTEMS COMPARED

There are important differences between the workmen's compensation and the Employees State Insurance Scheme now operating in India. Along with covering workmen engaged in different occupations and in some cases in the same occupation in different parts of the country. We will discuss in detail these differences as well as the similarities between these two schemes. It may however, be pointed out at this stage that this comparative study will be restricted mainly to the principles underlying the two schemes. A reference to the detailed provisions under any of them will be made only where such a reference is necessary for a proper understanding of the basic principles themselves.

INDIAS WORKMEN'S COMPENSATION AND EMPLOYEES STATE INSURANCE SCHEMES

The risks covered by both the Indian schemes are exactly the same. In fact, the same formula - "Personal injury by accident arising out of and in the course of the employment", has been used in both the Acts, dealing with these schemes.[1]

The list of occupational diseases is also almost common to both of then and the precedents established under one are generally accepted by the courts set up under the other. Apart from the fact that the two schemes grant protection against the same type of risks to workmen, the conditions for the payment of benefits are also more or less similar under both. Thus, it is laid down in both the Acts that the injury, unless it results in death, must not be attributable to the wilful disobedience or disregard by the workmen of any safety orders, rules, or the removal of safety guards and devises or to the influence of drinks and drugs. Other conditions relating to the notice of the accident, filing of claims, submission to periodic medical examinations etc. are also identical in both the schemes. It may further be noted that the list of dependants entitled to benefits in a fatal injury cases and the schedule of incapacity relating to permanent /temporary disablement cases are also identical under both the schemes. [2]

But apart from the these similarities, there is very little that is common to the two schemes.[3] The major differences, as considered by the legal scholars are as follows :-

(i) The differences in the provisions for benefits under the two Indian schemes are, of a more fundamental nature in case of fatal injuries and permanent disablements. This is because the benefits in such cases take the shape of lumpsum payments under the Workmen's Compensation scheme and of periodical pensions under the ESI scheme.[4]

(ii) As regards benefits in kind also, these are important differences between the two schemes. Medical care including hospitalisation and specialists services are now an integral part of the ESI Scheme. There is also provisions for supply of artificial limbs to injured workmen and for giving them suitable courses of industrial rehabilitation and vocational training. The workers covered by the workmen's compensation system does not however, enjoy, any of these benefits in kind as a matter of legal rights.[5]

(iii) Another important difference between the two Indian Schemes, is to be found in the provision regarding waiting period. The Workmen's Compensation Act prescribes a waiting period of three days and allows dating back only if the incapacity lasts for at least four weeks. But, on the other hand the ESI Act lays down that if the

incapacity continues beyond the waiting period i.e., longer than three days benefits will be paid from the first day of such incapacity. The effect of this difference is that in the case of accidents which cause disablement for only about a week or two, a workman under ESI scheme gets a much bigger payment than one covered by the workmen's compensation systems, though the pre-accident earnings of both these workmen were the same.[6]

(iv) Another important difference between the two schemes is regarding coverage for benefits. While Workmen's Compensation Act provides cash benefits for injury by accident only to the covered workmen, the ESI Acts provides for benefits to the family members of the covered workmen too. [7]

(V) Perhaps the most striking difference between the two schemes is in their approach to the basic problem; in other words, in their treatment of the risks of industrial injuries. Thus, the Workmen's Compensation Act merely imposes upon the employer, the legal liability to pay compensation to his injured workman on a scale fixed by it without paying any attention towards important problems such as "how it will be possible for the workman to realise his claims from a reluctant employer".[8] In other words, this Act only makes the employer to pay but leaves the workman to his own resources to compel him to do so. The ESI scheme, however takes

due notice of this difficulty of the poor victim of an industrial injury and without leaving him to the merely of employer, places upon a statutory body consisting of representatives of employers, workers and of the government. The responsibility of the statutory body in to ensure the payment due to the workman, at the prescribed rate of benefits.[9]

(VI) The basic difference in the treatment of industrial injuries under the two schemes is again responsible for other differences which are perhaps no less important than this. This is true of the medical procedure in general and the determination of question of disablement in particular. Under the workmen's compensation system it is an obligation for the workmen to submit to a medical examination by a qualified medical practitioner chosen by the employer or the commissioner; and if he refuses, he loses his right to compensation automatically. Under the ESI scheme the entire procedure of determination of disablement is different as any such question is referred by the corporation to a medical board constituted in accordance with the provisions of the Act. If the insured person or the corporation is not satisfied with the decision of the medical board, any of them may appeal to the medical Appeal Tribunal or the Employees Insurance Court directly. [10]

(VII) The most fundamental factor which works the distinct trend is that the ESI Act is based on the contributory principle of benefits, while the Workmen's Compensation Act, on the other hand originals from the poins principles of occupational risk and that payment of compensation liability of the employer. (11)

(VIII) Another important distinction is that the Workmen's Compensation Act, has no provision for rehabilitation of workers suffering from employment injury. Whereas section 19 of the ESI Act provides that ESI corporation shall make provision for rehabilitation of such workers. There is an obligation on the claimant to attend vocational training or industrial rehabilitation course which ESI corporation considers suitable for him. (12)

(IX) The Workmen's Compensation Act uses the term "Personal injury" as encompassing accident or occupational risks which entitles a worker for compensation but does not statutorily define the term. The ESI Act uses a more comprehensive and popular and internationally recognised expression, "The employment injury" that is defined under section 2(8) of the Act. (13)

The above discussion clearly shows that legal scholars are mostly in favour of the ESI Act, believe it to be a great improvement over the Workmen's Compensation Act. To some extent such a belief is true as some improvements brought by the ESI Act like cash benefits for the

waiting period, family coverage or the concept of "employment injury" rather than "Personal injury" etc. are praise morthy. But, other side of the story is quite different.

The shift from employer's unilateral liability under workmen's compensation scheme to the liability sharing by the State and the employer under ESI scheme were brought on the pretext of the following reasons :-

a. Smooth functioning

b. Social responsibiliy of the State

c. Quick redressal of Problems

d. Medical care and

e. Relief to small enterpreneurs.

But the following aspects were not taken into consideration :

a) Profit differentials within industries in profit were not taken into account hence the bigger industrial units benefitted more while the smaller units avoided registration.

b) Use of profit by private sector without national interest in mind, i.e. they get the benefits of States social responsibility towards development but invest their profits for personal and not national interest, as reflected by their expansion in areas of luxuary items production.

c) In Workmen's Compensation scheme the emphasis is on occupational illness coverage of all types, by improving schedules and establishing causality. It recognised the need for knowledge of industrial medicine and of uniformity of procedures in the establishment of causality. As well as special machinary of workmen's compensation commissioners were created to enforce the provisions of the scheme. In the name of providing medical care and broader facilities, this focus was lost, under ESI scheme. For e.g. ever the data about the incidence of morbidity, given in ESI annual reports gives a very hazy picture as various diseases are clubbed together, like boil, abscess, cellulitis and other skin infections are put in one group.

d) Family coverage was offered as added advantage. This was infact an unclear policy as the State was in any way committed to provide Basic Health Services, through Primary Health Centres and there was no logic for creating duplication of services for workers families. The 14% input of State was at the cost of another sector of Social security and was not an additional input as annual health inputs continued to delcine over years.

e) The argument that the worker depends on employers doctors is not sufficient as even in ESI the medical board has representatives who have link with and loyalities for the management.

f) By providing medical care the amount for compensation is reduced.

g) The procedural problems of evasion problems of enforcement, workers inability to wait or fight in law courts, which pushed ESI have not been resolved. The classic example of which is the case of Bhopal gas tragedy.

h) Even the ESI the lack of contribution by employers exists (as in table -2 of chpater - 5).

i) The fundamental change from the principle of occupational risks in W.C. Act to the contributory principle of benefits was a great relief to the employers because they were required to bear the whole financial burden of compensation under workmen compensation Act. [14] Any radical change in the employer's unilateral liability principle is neither desirable nor feasible for logical and other considerations in immediate future. Therefore, it is argued that the unilateral liability principle has to be retained so long as compensation scheme is in force. [15]

(j) The arguments that their are procedural problems for the workers arising out of employers liability to compensation (which is unilateral under W.C. Scheme), rationalises the imposition of contributory principle under ESI Scheme but it is not adequate excuse. The success of any scheme depends on the administrative capacity of the people who are entrusted with the tasks of implementing

the scheme. The main difficulty lies in effective enforcement of any legislation. Speaking at the Industrial and occupational Health Conference of South East Asian Countries held at Calcutta in December, 1958, Shri Gulzarilal Nanda observed that "measures relating to industrial hygience, health and safety were provided in adequate detail. Our problem mainly is of full implementation of whatever laws there already are and I frankly admit that due to inadequate inspectorate staff and similar reasons, implementation has not been as adequate as I would have liked. [16]

k) The other instance is that under the ESI Act there is a provision for periodical payments for compensation of employment injury irrespective of its character. It is argued that this trend is based on the psychological factor as the lumpsum payment is likely to be frittered away in short time. [17] But, there may be other reasons behind such arrangements. As the lumpsun payment of compensation to the workmen may be utilised in a better way or may be invested in such a way that the worker may get benefits from it. But when the payment is done periodically, where will such benefits go?

Within the existing framework of the Workmen's Compensation Scheme, some improvements can be introduced to ensure its efficient working. As recommended by National Commission on Labour, a central fund for Workmen's Compensation may be established and all employers covered by the scheme may be required to pay a specified percentage

of total wage bill of workmen to the fund. [18] All cash benefits can be paid out of this fund.

Industrial accidents and diseases are of wide personal and social significance. The nation suffers tremendous economic losses because it is deprived of the work of skilled men and women and above all the disabled man loses his morale. "Both on economic and on humanitarian side, but more cogently upon the later, the work done towards prevention of industrial accidents is of prime importance. [19] Should not then the State play a more active and rational role in this area?

One of the important elements of social security is health care. India is committed to the goal of Health For All" by the year 2000 A.D. For developing the countries vast human resources and for the acceleration and speeding up the total economic development and attaining the improved quality of life, primary health care has been accepted as one of the main instruments of the nation, since independence. In the overall health development programme, on the line of Bhore Committee's (1946) recommendations, emphasis is laid in preventive and promotive aspects and on organising effective and efficient health services which are comprehensive in nature, easily and widely available, freely accessible and generally affordable by the people. In the rural areas the minimum needs programme considered to be the sheet anchor for the promotion of primary health measure. There is a three tier system of health centres namely sub-centres, Primary Health Centres and Community Health Centres which

is tried to be strengthened from plan to plan. Curative care facilities are provided in a network of hospitals and dispensaries under the administrative control of ministry of Health in the Centre and Department of health in the States. Financial support is provided to the establishment of post-graduate institutions with provision for super specialities on a regional basis so as to meet the needs of the people as close to their habitation as possible.

Today medical treatment at PHC does not take care of the full cost of drugs or the indirect costs of illness such as the cost of transport loss of earning etc. It is considered that under the socio economic conditions prevailing in the country it will not be possible to extend full sickness benefit to the unorganised sector. some argue that in one important respect a greater measure of relief is both necessary and possible. This is in regard to free supply of drugs in government hospitals, primary health centres and dispensaries. Budgetary allotment for this purpose are generally low and inadequate and require to be enhanced. [20] This recognition in fact needs to be extended to other key inputs.

In such a context of existing health services system and socio-economic reality of Indian industrialisation the arrangement made under ESI Act which burdens the State to divert its limited revenues to ESI fund affects the budgetary allotment and financial assistance to the general health services system. Why should such a scheme grow at

the cost of general public? At present the ESI corporation is largely depending on the existing hospital facilities in the city. In case the corporation reserves a number of beds for the insured persons, would not the public in general suffer? Should not the State mend its ways and rethink its approach towards the problem of occupational health in particular and health in general?

The occupational health services provided under the ESI could very well be provided by the PHCs in their area, if they were developed as they were originally conceptualised.

Finally we must admit the limitations of our study which lacks any field study in the concerned area and hinders us from making data based analysis and comments on many aspects of the existing schemes. Though time did not permit us, we presume that such a study would be highly desirable and of great importance.

NOTES :-

1. S.R. Chandhuri, "Social Security in India and Britain" The world Press, Calcutta (1962), p. 268.
2. Ibid, p.270.
3. This impression is also current among the well known writers on social insurance in India; wide for example, S.D. Punekar's, "Social Insurance for Industrial Workers in India", p. 158.
4. Dr. Deepak Bathnagar, "State and Labour Welfare in India", N. Delhi 1990, p.193.
5. Ibid, p.219.
6. Supra, Note-1, at p.274.
7. Section-46 of the ESI Act - 1948.
8. N.H. Gupta, "Social Security Legislation for workers in India" Deep & Deep Publications, N.Delhi, (1986), P.108.
9. Ibid. p.158
10. Section - 54(A) - of the ESI Act - 1948.
11. Supra, Note-4, at, p.222.
12. Sharma, A.M., "Aspects of Labour Welfare and Social Security", Himalaya Publishing House, Bombay, 1981. p.98.
13. Supra - Note-4 at p.225.
14. Prof. Veer Singh, "Industrial Employment Injuries - An overview of the Legal Protection System", Deep and Deep Publications, New Delhi (1986), pp.260.
15. Ibid. p.261.
16. Ibid. p.263.
17. I.L.O, "News Service" 14th December - 1958, p.3.
18. The Workmen's Compensation (Occupatinal Diseases) convention - 1925 (No. 18) and the workmen's compensation (Occupational Diseases) convention (Revised) - 1934 (No. 42).
19. C.W. Hobbs, "Workmen's Compensation Insurance, p.24.
20. R.K.A. Subramanya, "Socia Security in Developing countries", Hari Anand Publications, N. Delhi - 1944, pp. 269-271.

APPENDIX - I

The Workmen's Compensation Act, 1923

[1][SCHEDULE III

(*See* Section 3)

LIST OF OCCUPATIONAL DISEASES

S. No.	Occupational disease	Employment
(1)	(2)	(3)
	PART A	
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to health or laboratory work; (b) All work involving exposure to veterinary work; (c) Work relating to handling animals, animal carcasses, part of such carcasses or merchandise which may have been contaminated by animals or animal carcasses; (d) Other work carrying a particular risk of contamination.
2.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
3.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes.	All work involving exposure to the risk concerned.
5.	Poisoning by organo phosphorus compounds.	All work involving exposure to the risk concerned.
	PART B	
1.	Diseases caused by phosphorous or its toxic compounds.	All work involving exposure to the risk concerned.
2.	Diseases caused by mercury or its toxic compounds	All work involving exposure to the risk concerned.
3.	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
5.	Diseases caused by chromium, or its toxic compounds.	All work involving exposure to the risk concerned.
6.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by radioactive substances and ionising radiations.	All work involving exposure to the action of radioactive substances or ionising radiations.

1. Subs. by Act 22 of 1984, s.6, for original Sch.III (w.e.f. 1-7-1984).

(1)	(2)	(3)
8.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
9.	Diseases caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic andaromatic series).	All work involving exposure to the risk concerned.
10.	Diseases caused by carbon disulphide.	All work involving exposure to the risk concerned.
11.	Occupational cataract due to infrared radiations.	All work involving exposure to the risk concerned.
12.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
13.	Skin diseases caused by physical, chemical or biological agents not included in other items.	All work involving exposure to the risk concerned.
14.	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.
15.	Poisoning by dinitrophenol or a homologue or by substituted dintrophenol or by the salts of such substances.	All work involving exposure to the risk concerned.
16.	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
17.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
18.	Occupational asthma caused by recognised sensitising agents inherent to the work process.	All work involving exposure to the risk concerned.
19.	Diseases caused by fluorine or its toxic compounds.	All work involving exposure to the risk concerned.
20.	Diseases caused by nitoglycerine, or other nitroacid esters.	All work involving exposure to the risk concerned.
21.	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned.
22.	Diseases caused by asphyxiants: carbon monoxide, and its toxic derivatives, hydrogen suphide.	All work involving exposure to the risk concerned.
23.	Lung cancer and mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
24.	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned.
[1][25.	Snow blindness in snow bound areas.	All work involving exposure to the risk concerned.

1. Ins. by Act 30 of 1995, s. 16 (w.e.f. 15-9-1995).

(1)	(2)	(3)
26.	Disease due to effect of heat in extreme hot climate	All work involving exposure to the risk concerned.
27.	Disease due to effect of Cold in extreme cold climate.	All work involving exposure to the risk concerned.]
	PART C	
1.	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraoosilicosis, asbestosis) and silico-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2.	Bagassosis.	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton, flax hemp and sisal dust (Byssisonsis).	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveelitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.]

APPENDIX - II

Employees' State Insurance Act, 1948

[1][THE THIRD SCHEDULE

[*See* section 52A]

LIST OF OCCUPATIONAL DISEASES

Sl. No.	*Occupational disease*	*Employment*
1	*2*	*3*
	PART A	
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination.	(a) All work involving exposure to health or laboratory work; (b) All work involving exposure to veterinary work; (c) Work relating to handling animals; animal carcasses, part of such carcasses, or merchandise which may have been contaminated by animals or animal carcasses; (d) Other work carrying a particular risk of contamination.

1. Subs. by Act 45 of 1984, w.e.f. 27.1.1985.

1	2	3
15.	Poisoning by dinitrophenol or homologue or by substituted dinitrophenol or by the salts of such substances.	All work involving exposure to the risk concerned.
16.	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
17.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
18.	Occupational asthma caused by recognised sensitising agents inherent to the work process.	All work involving exposure to the risk concerned.
19.	Diseases caused by flourine or its toxic compounds.	All work involving exposure to the risk concerned.
20.	Diseases caused by nitroglycerine or other nitroacid esters.	All work involving exposure to the risk concerned.
21.	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned.
22.	Diseases caused by asphyxiants; carbon monoxide and its toxic derivatives, hydrogen sulphide.	All work involving exposure to the risk concerned.
23.	Lung cancar and mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
24.	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned.
	PART C	
1.	Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraoosilicosis asbestoses) and silica-tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2.	Bagassosis.	All work involving exposure to the risk concerned.
3.	Brochopulmonary diseases caused by cotton, flax, hemp and sisal dust (Byssinosis)	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveelitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.

1	2	3
2.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
3.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes.	All work involving exposure to the risk concerned.
5.	Poisoning by organophosphorus compounds.	All work involving exposure to the risk concerned.
	PART B	
1.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
2.	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.
3.	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
5.	Diseases caused by chromium or its toxic compounds.	All work involving exposure to the risk concerned.
6.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by radioactive substances and ionising radiations.	All work involving exposure to the action of radioactive substances or ionising radiations.
8.	Primary epithelomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these susbtances.	All work involving exposure to the risk concerned.
9.	Diseases caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic and aromatic series)	All work involving exposure to the risk concerned.
10.	Diseases caused by the carbon disulphide.	All work involving exposure to the risk concerned.
11.	Occupational cataract due to infrared radiations.	All work involving exposure to the risk concerned.
12.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
13.	Skin diseases caused by physical, chemical or biological agents not included in other items.	All work involving exposure to the risk concerned.
14.	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.

BIBLIOGRAPHY

PRIMARY SOURCES :-

- Parliamentary Debates, - 1944 to 1948 and 1984 to 1995 (All vols.)
- Annual Reports of E.S.I. Corporation;
- Annual Reports of Ministry of Labour, Government of India;
- Indian Labour Year Books; Labour Bureau, Shimla;
- Indian Labour Gazette;
- Report of Royal Commission on Labour, 1931;
- Report on the Health Insurance for Industrial workers (Adarkar's Report), New Delhi (1944).
- Report of the Labour Investigation Committee (Rege Committee) New Delhi (1946);
- Report of the Study Group on Social Security, 1958;
- Report of the ESIS Review Committee, New Delhi (1966);
- Report of the Committees on Perspective Planning New Delhi (1972);
- Report of the High -Powered Sub-Committee on Amendments to the ESI Act, New Delhi (1978);
- Report of the Committee on labour Welfare, New Delhi (1969)
- Report of the Committee on Child Labour, New Delhi (1979);
- Report of the ESI Review Committee, New Delhi, (1982);
- Supreme Court Report;
- Report of the Task Force on health, Prepared for the National Commission on Self-Employed Womem: Occupational Health Issues of Women in the Unorganised Sector, Ministry of H.R.D., New Delhi (1988)
- Report of the National Commission on Rural Labour, Govt. of India, Ministry of Labour, New Delhi (1991);

SECONDARY SOURCES :-

Books and Unpublished Theses :

Abhyankar, N.G., Industrial Labour and Social Security (1944)

Agrawal, A.N.- Social Insurance Planning in India, Kitab Mahal, Allahabad, 1944.

Agarwal, A.N., Social Insurance Planning in India (1946).

Agarwal, A.N., Health Insurance in India (1945)

Agarwal, K.G. Casual Labour of Kanpur: Their Living and Working Conditions, New Delhi, Indian Labour Institute, 1988.

Albuquerque, V.M., "Social Insurance Administration in India", Indian Journal of Pub. Admn. 2 (2) (April-June 1956).

Atiyah, P.S., Accidents, Compensation and the Law (1975).

Bagchi, A.K., Political Economy of Underdevelopment, Cambridge University Press, Cambridge, 1982.

Banerji, D. : Health and Family Planning Services in India: An Epidemiological, Socio-Cultural and Political Analysis and a Perspective, New Delhi, Lok Prakash, 1985.

Banaji, Jairus and rohini Hensman. Beyond multinationalism: manaement policy and bargaining relationships in international companies. (Indo-Dutch Studies on Development Alternatives, vol.2) Delhi: Sage, 1990.

Banerjee, Nirmala (eg.) Indian women in a changing industrial scenario. (Indo-Dutch Studies on Devlopment Alternatives, vol.5) Delhi: Sage, 1991.

Baud, Isa. Forms of production and women's labour: gender aspects of industrialisation in India and Mexico. Delhi: Sage, 1992.

Beauchamp, J., British Imperialism in India, Merbin and Lawrence, London, 1984.

Bennett, Lynn. Women, poverty and productivity in India, Washington: The World Bank, 1992.

Bettleheim, Charles, India Independent, M.R. New York, 1968.

Bagchi, Amiya Kumar. New technology and the workers response: micro-electronics, labour and society. Delhi: Sage, 1994.

Bhagoliwal, T.N. - Economics of Labour and Industrial Relations, Sahitya Bhawan, Agra, 1982.

Bhargava, K.K., "Cash Benefits under ESIS in India", Bulletin of ISS, 10-11 (october - November 1957).

Bhatia, K.L. "Administration of Workmen's Compensation Law" - Deep and Deep Publications, New Delhi (1989).

Bhatnagar, D.I. "Labour Welfare and Social Security Legislation in India", Deep and Deep Publications, New Delhi (1987).

Bhatnagar, Labour Problems in India (1963)

Bhattacharya, J.P., "Place of Social Legislation in Developing Countries", Yojna (June 1965).

Bhattacharya, V.R. Some Aspects of Social Security - Measures in India, Metropolitan Book Co., Delhi, 1970.

Bhowmik, Sharit K. Worker co-operatives: an alternative strategy for industrial growth. Delhi: Friedrich Ebert Stiftung, 1993.

Blaxter, M., The Meaning of Disability - A Sociological Study of Impairment (1976).

Broughton, G.M.: Labour in Indian Industries, Bombay: Oxford University Press, 1924.

Centre for Education and communication. Social clause in multilateral trade agreements: a dossier on labour standards, environmental standards and human rights in global trade. Delhi: CEC, 1955.

Chakravarty, Dipesh, Re-thinking working class history: Bengal 1890-1940. New Delhi: Oxford University Press, 1989.

Chandra, Harish, "Social Security of Industrial Workers in India with speical Reference to ESIS", The Indian Journal of Social Work (October 1968).

Chandra, P., Planning of Social Security and Labour Welfare in India (1945).

Chandavarkar, Rajnarayan. The origins of industrial capitalism in India: business strategies and the working classes in Bombay 1900-1940. Delhi: Cambridge University Press/Foundation Books, 1994.

Cheit, E. and gordon, Occupational Disability and Public Policy (1963)

Choudhuri, P., The Indian Economy: Poverty and Development, Crossly Lockwood, London, 1978.

Chaudhary, Rai, Sickness Insurance in India and Britain (1962).

Choudhuri, Sunil Rai - Social Security in India and Britain, The World Press Private ltd., Calcutta, 1962.

Chohen, B.J. and Towy Evans, M.M.: Working Conditions and Employee Services, Institute of Personnel Management, Broadsheets: London, 1950.

Dahrendorf, Ralf. Class and class conflict in industrial society. Standford: Standford Universituy Press, 1959.

Dass R.K., The Plantation Labour in India, R. Chatterjee, Calcutta, 1981.

D. Banerji, Poverty Class and Health Culture in India, Vol. 1, Prachi Publication, New Delhi, 1981.

Desai, A.R.: India's Path of Development - A Marxist Approach, Bombay: Popular Prakashan, 1984.

Dhar, P.N. and Lydall, H.F.: The Role of Small Enterprises in Indian Economic Development, Bombay: Asia, 1961.

Djurfeldt and Lingberg. S., Pills Against Poverty : A Study of the Introduction of Western Medicine in a Tamil Village Oxford and IBH Publication, New Delhi, 1985.

Dubashi, Jay, "Unemployment", India Today (30 September 1983).

Dutt, R.P., India Today, Manisha, Calcutta, 1947.

Engels, F: The Conditions of the Working Class in England, MECW, Lawrence and Wishart, 1975.

Eswara Prasad, K.V.: Analysis of Labour Market for Technical Manpower in India, Unpublished Ph. D. Thesis, JNU, New Delhi.

Friedlander, Walter A., Introduction to Social Welfare (1968).

Ghaiye, B.R. - Employment - Its Terms and Conditions in Public and Private Sectors, Eastern Book Co., Lucknow, 1981.

Ghosh and Ghorpade, Industrial Psychology (1981).

Girija, P.L.T. : "Unorganised Sector - An Exploratory Sociological Study of Construction Workers in Madras, Unpublished M.Phil Thesis, JNU, New Delhi, 1980.

Giri, V.V. : Labour Problems in Indian Industry, Bombay: Asia Publishing House, 1958.

Giri, V.V., "ESI Scheme: A Review", Indian Factories Journal 15:29 (December 1953).

Gothoskar, Sujat (eg.) Struggles of women at work. New Delhi: Vikas, 1992.

Guha Thakurtha, S.N.: Contract Labour in Construction Industry, Calcutta: Firma KLM, 1980.

Gupta, M.N., Technical Review on Pneumoconeosis in India, Technical Report Series, No. 1, ICMR, 1970.

Gupta, N.H., "Social Security Legislation for Labour in India," Deep and Deep Publications, New Delhi (1988).

Harikesh, "A Scheme for further Extension of Medical Benefit in U.P. under ESIS," Indian Journal of Lbour Economics 19:3 (January 1977).

Hasan, S.Z., "Public Assistance", Encyclopaedia of Social Work in India (1964)

Henderson, "Should Workmen's Compensation be Extended to Non-occupational Injuries, Texas Law Review 48 (1969).

Holmstrom, M.: Industry and Inequality, The Social Anthropology of Indian Labour, New Delhi : Orient Longman, 1985.

Idgunji, Social Insurance and India (1948)

International Labour Organization, Labour Legislation in India, ILO, New Delhi, 1957.

International Social Security Association, Asian News Sheet, Vol. XXII, December, 1992.

Jagannadham, V. and Palvia, C.M.- Problems of Pensioners in India, Lalita Prakashan, New Delhi, 1978.

Jaganadham, V., "Social Legislation in India", Indian Journal of Social Work 5 (March 1945).

Jain, M.P., Outlines of Indian Legal History (1972)

Jois, P.V.: Labour Welfare - New Outlook of Industry and Labour in Modern Society, Bombay: Somaiya Publications Pvt. Ltd., 1981.

Joseph, Cherian and K.V. Eswara Prasad. Women, work and inequity: the reality of gender. Delhi: National Labour Institute, 1995.

Kagzi, M.C. Jain - The Constitution of India, metroipolitan Book Co., Delhi, 1983.

Keni, V.P., Unified Scheme of Social Insurance for Industrial Workers in India (1947).

Kessler, H.H., Rehabilitation of the Physically Handicapped (1953).

Kidcon, Michel, Prefile of Foreign Investment in India.

Kidd, J.C., Factory Legislation in India, University of Calcutta, Calcutta, 1920.

Kumar, Rajeev, "Social Security Compensatory Development", The Indian Journal of Labour Economics 19 (January 1977).

Kumar, Sanjay: Industrialization and Patterns of Migration, Unpublished M.Phil Dissertation, JNU, 1983.

Kumar, Vijay: Industrialization and Society in India, Unpublished M.Phil Dissertation, JNU, 1983,

Lambert, Richard D.: Workers, Factories, and Social Change in India, Princeton: University Press and Bombay: Asia, 1963.

Larson, A., The Law of Workmen's Compensation (1968)

Loster, A. Richard, Insight into Labour Issues (1949).

Malik, P.L.- Industrial Law, Eastern Book Co., Lucknow, 1982.

Mathur, D.C.: Contract Labour in India, Delhi: Mittal Publications, 1989.

Mathur, M.P., Social Security in India and Abroad.

Mazumdar, R.C., Corporate Life in Ancient India (1955).

Mendelsohn Ronald - Social Security in the British Common Wealth, Athlone Press, London, 1954.

Menon, V.K.R., "The Influence of International Labour Conventions on Indian Labour Legislations", Internatinal Labour Review 73 (June 1956).

Mogensen, Vernon L. Office politics: computers, labour, and the fight for safety and health. New Brunsuick, NJ: Rutgers University Press, 1996.

Moore and A.S. Feldman (eds): Labour Commitment and Social Change in Developing Areas, New York: Social Science Research Council, 1960.

Moorthy, M.V.: Principles of Labour Welfare, Vishakhapatnam: Gupta Brothers, 1968.

Morris, D.M., Emergence of Industrial Labour Force, Oxford University, Press, Bombay, 1965.

Munkaman, John, Employer's Liability at Common Law (1975).

Myers, C.A.: Labour Problems in the Industrialization of India, Massachussetts: Harvard University Press, Cambridge, 1958.

Myrdal, Gunnar: Asian Drama: An Inquiry into the Proverty of Nations, Harmondsworh: Penguin, 1968.

Padmanabhan, V.T., The Number Game: A Study on the Occupational Health Hazards at IRE, Alwaye, Kerala Shastra Sahitya Parishad, Trichur, 1985.

Panitch, leo. Working class politics in crisis: essays on labour and the state, London: Verso, 1986.

Pant, S.C., Indian Labour Problems (1973).

Papola, T.S. and Subrahmaniam, K.K.: Wage Structure and Labour Mobility in Local Labour Market, Ahmedabad: A.P.I.E.S.R., 1973.

Patel, B.B.: Work, Working Conditions and Earnings: Agarbatti Workers in Ahmedabad, Ahmedabad: Gandhi Labour Institute, 1986.

Patel, K.: Rural Labour in Industrial Bombay, Bombay: Popular Prakashan, 1963.

Patnaik, Prabhat, Imperialism and Growth of Indian Capitalism, Studies in the Theory of Imperiaism, Longman, London, 1975.

Pattabhi Raman, C.R., "Labour Problems and Policy in India", Economic Review (January 1964).

Punekar, "Social Protection Through Mutual Aid: A Rational Approach to Cooperation and social Security", Indian Economic Journal (July 1957).

Punekar, S.D.-Social Insurance for Industrial Workers in India, Bombay, 1950.

Purushotam, "Industrial Health," Indian Labour Gazette 14:2 (August 1956).

Qadeer, I. and Anuorat Roy, World, Health and Wealth", Paper Presented at Kith World Sociological Conference, New Delhi, 1986.

Ramaswamy, E.A. A question of balance: labour, management and society. Delhi: Oxford University Press, 1997.

Rao, B. Shiva, The Industrial Workers in India, Allen and Urwin, London, 1985.

Ray, Rajat K., Industrialzation in India, Oxford University, Press, New Delhi, 1979.

Robb, Peter (ed.) Dalit movements and meanings for labour in India. Delhi: Oxford University Press, 1993.

Robinson, J., "Safety, Health and Welfare in Industry", Indian Journal of Labour (Sept. 1963).

Rosen, G.: History of Public Health, New York: M.D. Publication, 1958.

Samaddar, R. Workers and automation: the impact of new technology in the newspaper industry., Delhi: Sage, 1994.

Sanjivaya, D., Labour Problems and Industrial Development in India (1970)

Saran, A.B. and Sandmwar, A.N.: Problems of Women Workers in Unorganised Sectors, New Delhi: Northern Book Centre, 1990.

Satya Raju, R.: Urban Unorganised Sector in India, Delhi: Mittal publications, 1989.

Sen, S.: Working Class of India, History of Emergence and Movement, 1830-1970, Calcutta: K.P. Bagchi, 1977.

Sharma, A.M. - Aspects of Labour Welfare and Social Security, Himalaya Publishing House, Bombay, 1981.

Sharma, B.: The Indian Industrial Worker, Delhi: Vikas, 1974.

Sharma, K.M. - Social Assistance in India. The Macmillan Company of India Limited, Delhi, 1976.

Sheth, N.R.: The Social Framework of an Indian Factory, Manchester: University Press, 1968.

Shrikov, G.K., Industrialization of India, People's Publishing House, New Delhi 1980.

Simeon, Dilip. The politics of labour under late colonialism: workers, unions and the state in Chhota Nagpur 1928-1939. Delhi: Manohar, 1995.

Singh, A.N.: Child Labour in India-Socio-Economic Perspectives, Delhi: Shipra Publications, 1990.

Singh, Manjit. The political economy of unorganised industry: a study of the labour process. Delhi: Sage, 1990.

Singh, V.B. (ed.), Labour Research in India (1970).

Singh, V.B., Patterns of Social Security for Industrial Labour in India (1963).

Sinha, G.P. and Sinha, P.R.N. - Industrial Relations and Labour Legislation, Oxford Publishing Co., New Delhi, 1977.

S.K. Wadhaman, "Social Security for Workers in the Informal Sector in India," ILO, 1987.

Society for participatory Research in Asia (PRIA), Beyond Bricks and Stones - the Voice of Construction Workers, New Delhi: PRIA, 1986.

Sonarikar, Sunanda, Implementation of Labour Enactments (1976).

Srivastava, K.D. - Commentaries on Workmen Compensation Act, 1923, Western Book Co., Lucknow, 1978.

Srivastava, K.D. - Commentaries on E.S.I. Act, 1948, Eastern Book Co. Lucknow, 1979.

Srivastava, K.N., Industrial Peace and Labour in India (1965).

Subramanya, R.K.A. (1992), "Social Security in the Context of the New Industrial Policy" : Certain Proposals", in Report of the Seminar, New Delhi : Social Security Association of India, 140-167.

Syssinosis, Technical Information Bulletin, No. 4, ICMR, 1967.

Tannebaum, "Workmen's Compensation: A Vehicle for Compensating Good Samaritan", Buffalo Law Review 24 (1974-75).

Thomas, Hnk (ed.) Globalization and third world trade unions: the challenge of rapid economic change. London: Zed Books, 1995.

Trivedi, Ajay: Socio-Economic Determinants of Legislation Influencing Health of the Industrial Worker, Unpublished M.Phil Dissertation, JNU, New Delhi, 1987.

Tumala, K.K., "Problems of Medical Benefits under the ESI Scheme", Indian Journal of Social Work 23: 3 (oct. 1962).

Vaid, K.N. : The New Worker, Bombay, 1947.

Varghese, Jose: Law Relating to the Employment of Children in India, Secunderabad: Socio - Legal Resource Centre, 1989.

Zurbrigg S., Rakku's Story: Structure of ill Health and Sources of Change, V.H.A.I., New Delhi, 1984.

ARTICLES AND SEMINAR PAPERS

Albuquerque, V.M., "Social Insurance Administration in India", Indian Journal of Pub. Admn. 2 (2) (April-June 1956).

Basu, Timir: "Futility of Contract Labour Act", EPW, 2 July, 1977.

Basu, Timir: "Workers as Pawns in Parliamentary Politics", EPW, 27, Oct. 1979.

Bhargava, K.K., "Cash Benefits under ESIS in India", Bulletin of ISSA, 10-11 (October-November 1957).

Bhattacharya, J.P., "Place of Social Legislation in Developing Countries", Yojna (June 1965).

Bhatty, Zarina: "The Invisible Work that feeds the Family", Mnushi, New Delhi, No. 27, March-April, 1984.

Bhowmik, Sharit. Workers as shareholders: case for closer examination. "EPW"; 1 October 1994.

Breman, Jan: "A Dualistic Labour System"? A Critique of the "Informal Sector" Concept, EPW, 27, Nov. 4 Dec. and 11 Dec., 1976.

Breman, Jan. Labour get lost: a late-capitalist manifesto. "EPW"; 16 September 1995.

Chandra, Harish, "Social Security of Industrial Workers in India with Special Reference to ESIS", The Indian Journal of Social Work (Octber 1968).

Chatterjee, M.: "Occupational Health Issues of home - based Piece-rate Workers", Self-Employed Women's Association, Ahmedabad, 1987.

Dasgupta, Ranjit: "Factory Labour in Eastern India: Sources of Supply", Indian Economic and Social History Review, Vol. XIII, No. 3, July-Sept., 1976.

Datt, Ruddar. New economic policy and its impact on industrial relations and employment in India. "Indian Journal of Labour Economics" 36(I): January-March 1993.

Deshpande, L.K. Economic liberalisation and labour in India. "Indian Journal of Labour Econmics' 35 (4): October-December 1992.

Deshpande, Sudha, Structual adjustment and feminization. "Indian Journal of Labour Economics" 35(4): October - December 1992.

Economic Times: "Unorganised Sector - High Risk, Low Wages", Economic Times, 6th Feb., 1983, Bombay.

Dubashi, Jay, "Unemployment", India Today (30 September 1983).

Ghos, P.P.: "Observations on the Unorganised Labour in India," Paper Presented at the National Seminar on social Security for Unorganised Labour, Under the Auspices of National Labour Institute, New Delhi: March 14-16, 1983.

Giri, V.V., "ESI Scheme: A Review", Indian Factories Journal 15:29 (December 1953).

Gopalan, C. (1983), "Development and Deprivation: The Indian Experience", E.P.W. XVIII, 2163-68.

Harikesh, "A Scheme for further Extension of Medical Benefit in U.P. under ESIS, " Indian Journal of Labour Economics 19:3 (January 1977).

Hasan, S.Z., "Public Assistance in India", Indian Journal of Labour Economics 4:4 (January 1962).

Henderson, "Should Workmen's Compensation be Extended to Non-occupational Injuires, Texas Law Review 48 (1969).

I. Qadeer and D. Roy: "Work, Wealth and health: Sociology of Worker's health in India, Social Scientist, (No. 192-193), 1989, pp. 45-99.

Jaganadham, V., "Social Legislation in India", Indian Journal of Social Work 5 (March 1945).

Jhabvala, Renana. "Invisible" workers reach international heights. "EPW"; 9 December 1995.

Kumar, Rajeev, "Social Security Compensatory Development", The Indian Journal of Labour Economics 19 (January 1977).

Lulell, H.: "Urban Development and Employment in Calcutta", International Labour Review, Vol. 109, No. 1, July 1973.

Mehta, Prayag, New Economic policy, workplace and human development. "EPW"; 28 May, 1994.

Menon, V.K.R., "The Influecne of Inernational Labour Conventions on Indian Labour Legislations", International Labour Review 73 (June 1956).

Mohan, I.: "Resettlement: The other Delhi", Lokayan Bulletin, Vol. 13, No. 1, 1985.

Nagaraj, R. Employment and wages in manufacturing industries: trends, hypothesis and evidence. "EPW"; 22 January 1994.

Palekar, S.A.: "Real Wages in India 1939-50", The Economic Weekly, Annual No., Jan, 1957.

Papola, T.S.: "Informal Sector: Concept and Policy", EPW, May 3, 1980.

Patel, S.J.: "Planned Development in India - II, Reflections on Choices: 1980-2000", Mainstream, Feb. 16, 1980.

Patnaik, Prabhat: "Industrial Development in India Since Independence", Social Scientist, Vol. 7, No. 11, June 1979.

Pattabhi Raman, C.R., "Labour Problems and Policy in India", Economic Review (January 1964).

Punekar, "Social Protection Through Mutual Aid: A Rational Approach to Cooperation and Social Security", Indian Economic Journal (July 1957).

Purushottam, "Industrial health," Indian Labour Gazette 14:2 (August 1956).

Rathke, Wade and Joel Rogers. A strategy for labour. "Dissent" : Fall 1996.

Review of Labour. "EPW"; 24 February and 28 December 1996.

Robinson, J., "Safety, Health and Welfare in Industry", Indian Journal of Labour (Sept. 1963).

Sethuraman, S.V.: "The Informal Sector in Developing Countries: Policy Implications", Social Action, July-Sept. 1977.

Shah, Nandita, Sujata Gothoskar, Nandita Gandhi and Amrita Chhachhi, Structural adjustment, feminization of labour force and organisational strategies. "EPW"; 30 April 1994.

Sinclair-Jones, Jan. Women and technology: problem of technological unemployment or deskilling. "EPW"; 20 April 1996.

Tannebaum, "Workmen's Compensation : A Vehicle for Compensating Good Samaritan", Buffalo Law Review 24 (1974-75).

Tripathi, G.C. and Vasudeo, N.D.: Majumdar, R.D. and Deotals, P.G., Study of lung infection in beedi workers", Indian Journal of Occupational Health, New Delhi, Vol. 28, No. 4, Oct.-Dec. 1985.

Tripathy, G.C.: Vasudeo, N.D., majumdar, R.D. and Deotals, P.G., Study of some health problems of beedi woirkers, Indian Journal of Occupational Health, Vol. 29, No. 4, Oct-Dec. 1986.

Tumala, K.K., "Problems of Medical Benefits under the ESI Scheme", Indian Journal of Social Work 23:3 (Oct. 1962).

Visvanathan, Shiv. May day, May day. "Seminar" 449 (annual issue): January 1997.

Wage, E. : "Occupational Diseases Afflicting Cole Miiners", Wage Earners, Bombay, September, 1982.

Weiner, Myron,Child labour in India: putting compulsory primary education on the political agenda. "EPW"; 9 November 1996.

Wilson, Kalpana. Co-option or confrontation: new challenges for Indian trade unions. "EPW"; 6 January 1996.